

MHBUE040012662022



Presented on :12/10/2022
 Registered on :12/10/2022
 Decided on :13/06/2023
 Duration : 0 Y. 08M. 01D.

IN THE COURT OF AD-HOC DISTRICT JUDGE-1, KHAMGAON.
 (Presided over by Laxmikant A. Bidwai)

Misc. Civil Appeal No.23/2022

Exhibit 35

1. **Manoj Bhavarlal Chhangani**
 Age- 45 years, Occ. Business
2. **Mahesh Bhavarlal Chhangani**
 Age 43 years, Occ. Business
 Both r/o. Near Satyanarayan Temple,
 Sarafa, Khamgaon Tq. Khamgaon
 Dist. Buldhana

.. Appellants

- Versus -

1. **Jitendra Madhusudan Vyas**
 Age -35 years, Occ. Business
 R/o. Besides Krushna Dairy,
 Kisan Nagar, Khamgaon
 Dist. Buldana.

Respondent

**Appeal Under Section 104 r/w Order XXXXIII Rule 1 of The Code of
 Civil Procedure.**

Appearance:

Mr. P. G. Bhaiyya, Advocate for the Appellants.
 Mr. U. S. Apte, Advocate for respondent.

JUDGMENT

(Delivered on this 13th June 2023)

01. This is an miscellaneous appeal filed under Section 104 r/w Order XXXXIII Rule 1 of The Code of Civil Procedure.

02. For the sake of convenience the parties to the appeal are hereinafter referred by their original nomenclature in the suit.

03. Briefly the plaintiffs case can be stated as under-

The property bearing Nazul Sheet No.26-A Plot No.2/A, property No.Z2W24C000086 whose old property number is 27, House No. 9-D and 9-E whereas the four boundaries are To East- House of Padmabai Rathi, To West- House of Koli, To South- Road and To North- Property of Gangabai Vyas, is the subject matter of the suit. Hereinafter it is referred as suit premises. The plaintiff has filed the suit bearing RCS No.119/2022 before the Ld. Civil Judge Junior Division, Khamgaon for the relief that they may not be evicted from the suit premises without following due process of Law and for the injunction not to pull down the suit property by any mode and some consequential reliefs.

04. The plaintiffs came with the case that his father Bhavarlal Chhangani was the tenant of the suit premises and after his death the plaintiffs are the tenants of the suit premises. The defendant is the landlord and by means of hook and crook

intending to evict the plaintiffs from suit premises. With intent to evict the plaintiff from suit premises, the defendant in collusion with the Municipal Council, Khamgaon issued notice under Section 195 of The Maharashtra Municipal Council, Nagar Panchayats and Industrial Township Act 1965. Said notice was pasted on the outer door of the suit property. The suit property is in good condition. The plaintiffs are running their Loud-Speaker business through the ground floor and first floor of the suit premises. Further in view of the notice by the Municipal Council plaintiffs have every apprehension that at any moment the defendant may forcibly evict the plaintiff from suit premises. Therefore, until the decision of the suit interim reliefs may be granted in the plaintiff's favour, restraining the defendant from plaintiff's eviction from suit premises and pulling down the suit premises.

05. The defendant has filed written statement cum reply to the temporary injunction application and categorically denied that plaintiffs are the tenants of the suit premises. According to the defendant, plaintiffs are the trespassers in the suit premises. Further it is contended that the suit premises is in dilapidated condition and at any moment it may be collapsed and it may cause damage/harm to the neighbouring residents and bypassers. Therefore, the Municipal Council issued notice under Section 195 of The Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act 1965. But the plaintiff has not made party to the Municipal Council in this suit, therefore, challenging the

notice of Municipal Council in the absence of Municipal Council is not permissible in the eye of law, as such reject the application for interim relief.

06. I have heard both sides at length. Advocate Shri. Bhaiyya for the plaintiffs vehemently argued that the landlord-tenants relation-ship between the defendant and plaintiff is not disputed as well the possession of the plaintiff over the suit premises is also not disputed. The notice under Section 195 of The Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act 1965 was posted on the outer door of the suit premises without giving an opportunity of hearing to the plaintiff by the Municipal Council, which tends to show that the defendant and Municipal Council are in connivance. Further he argued that if the defendant is really intending to pull down the suit premises as it is in dilapidated condition then at least in view of Section 16(1) (i) and Section 16(6) of the Maharashtra Rent Control Act the defendant should have to comply the conditions as per the mandate of Law. If the defendant complies the condition of Section 16(6) of the Maharashtra Rent Control Act in that event the plaintiffs are ready to evict the suit premises. He prayed to allow the application.

07. Per contra, the Ld. Advocate Shri. Apte for the defendant argued that mere allegations by the plaintiff that the defendant and Municipal Council are in connivance with each

others carries no importance in the eyes of Law unless any supporting material is placed on record to substantiate such allegations. Further he argued that the suit premises is more than 80 years old and barring the plaintiffs, no one is in possession over any part of the suit premises, as it is in dilapidated condition. Further he argued that the notice under Section 195 of The Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act 1965 is issued by Municipal Council and plaintiff is challenging the said notice itself in absence of the Municipal Council therefore, the relief claimed by the plaintiffs are not appreciable. Further he argued that even if the plaintiffs came with the case that they are tenant of the suit premises but in the eyes of the defendant they are the trespassers. At no point of time, the defendant has recognized the plaintiffs as a tenants. Therefore, there is no question at all to comply the provision of Maharashtra Rent Control Act. Furthermore, he argued that the conditions of Section 16(6) of the Maharashtra Rent Control Act are applicable, if the landlord files the eviction suit against the tenants under Section 16(1)(i) of the Maharashtra Rent Control Act. But the case in hand neither the defendant has admitted the plaintiff has tenant nor the defendant has filed the suit under Section 16(1)(i) of the Maharashtra Rent Control Act. Hence, prayed to dismiss the appeal.

08. Having regard to the above submissions, following points arise for my determination and I have recorded my findings thereon for the reasons given below:

S.No.	POINTS	FINDINGS
1.	Whether plaintiff has a prima facie case ?	In the affirmative
2.	Whether balance of convenience lies in plaintiff's favour ?	In the affirmative
3.	Whether plaintiff would suffer irreparable loss, if injunction is not granted ?	In the affirmative
4.	Whether interference is required in the order of Ld. Trial Court ?	In the affirmative
5.	What order ?	As per final order

AS TO POINTS NO. 1 TO 4:

09. As all the points are inter related with each others, therefore, they are taken up together for discussion and recording the findings. According to the plaintiffs they are tenants and the defendant is landlord of suit premises whereas according to the defendant, plaintiffs are the trespassers and the defendant is the owner of suit premises.

10. In this scenario, it is need of the time to go through the definition of a tenant provided under Section 7(15) of the Maharashtra Rent Control Act. On reading this definition it is very much clear that sub clause (d) of the Section 7(15) of the Maharashtra Rent control Act speaks that in relation to any

premises when the tenant dies, whether death occurred before or after the commencement of this Act, any member of the tenant's family who (i) whether they are let for residence is residing or (ii) whether they are let for education, business trade or storage is using the premises for any such purpose with the that tenant at the time of death, or in the absence of such member any heir of the deceased tenant as may be decided, in the absence of agreement by the Court is a tenant. Keeping in mind such a definition of the tenant what transpires from the record is that predecessor in title of the suit premises had initiated one eviction proceeding against the father of the defendant namely Bhavarlal Jankiram Chhangani. The said proceeding was filed before Sub-Divisional Officer and Rent Controller, Khamgaon. It's case number was R.C.BRA-14/Khamgaon/1992-93. So it is very much clear that father of the plaintiffs was the tenant of the suit premises who died in or about the year 2015. Whereas according to the plaintiff, after the demise of their father they are running the business of their father from the suit premises. Therefore, prima facie there is reason to say that the plaintiffs are tenant of suit premises.

11. Now one thing is clear that prima facie it appears that the plaintiffs are the tenant of the suit premises. So I would like to turn to the issue of notice by the Municipal Council under Section 195 of The Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act 1965. As per this provision if it appears to the Chief Officer of the Municipal Council that any building or

other structure or anything affixed in building or structure is in ruinous condition or likely to fall or in any way dangerous to any person occupying, resorting to or passing by such building or structure or any other structure or place in the neighbourhood thereof, the Chief Officer may by written notice require the owner or occupier of such building or structure to pull down secures, remove or repair such building, structure or things or do one or more such things and to prevent all causes of danger therefrom. So keeping in mind this provision, I have turned to the documents on record that is the notice issued by the Municipal Council, Khamgaon on 21/07/2022, under Section 195(1)(2) of The Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act 1965. It reveals that this notice was issued by Municipal Council, Khamgaon in response to the landlord's application dated 20/06/2022 for permission to pull down the suit premises. In the notice it is referred that the suit premises is in dilapidated condition and at any moment it may be collapsed therefore, the owner i.e. plaintiff shall pull down the suit premises at the earliest, in order to save the damages and lives of neighbouring residents, bypassers etc. Moreover, the document placed on record by the defendant speaks that one Shri. S. M. Jadhav having education DCE had issued undated certificate stating therein that the suit premises was inspected by him and as per his opinion the building is 80 years old and may collapse at any moment due to its dilapidated condition. For want of any date on

this certificate in like manner for want of date of inspection of suit premises by him and for want of any notice to the occupant i.e. the plaintiff, the inspection of the suit premises by Shri. S. M. Jadhav is a doubtful. Moreover, it does not appear that he is Government approved/recognized structural auditor. So, there is reason to suppose that this certificate was issued by Shri. S. M. Jadhav at the instance of defendant. It is also pertinent to mention here that there is no prima facie material before the Court suggesting that before issuance of notice dated 21/7/2022, the Municipal Council through its recognized Structural Auditor or Engineer had inspected the premises.

12. From the above referred two documents and its interpretation what transpires is that it is the plaintiffs who are motivating/insisting to the Municipal Council for issuing the notice under Section 195 of The Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act 1965. So prima facie there is reason to suppose that the notice under Section 195 of The Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act 1965 by the Municipal Council is the outcome of collusion between defendant and authorities of the Municipal Council so it carries no significance at this juncture.

13. Further admittedly the defendants are in possession over the suit premises and according to them they are running their business from the suit premises. In such set of facts and

circumstances, if the suit premises has been pulled down on the strength of collusive notice under Section 195 of The Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act 1965 then will make inconvenience to the plaintiffs as well as for want of opportunity to run the business they may suffer irreparable loss.

14. After all above discussions, I have recorded my findings to the points No.1 to 4 in the affirmative. But before parting with the order, I have to say that observations in this order are prima facie in nature therefore, the Ld. Trial Court shall not be influenced by it, during the course of trial and its logical conclusion. In the result, I proceed to pass the following order.

ORDER

1. The appeal is allowed.
2. The defendants are hereby temporarily restrained from pulling down/demolishing the suit premises until the conclusion of the trial or further orders whichever is earlier.
3. The defendants are also hereby temporarily restrained from evicting the defendants from the suit premises, until the conclusion of trial or further orders whichever is earlier.

Date :13-06-2023
Place: Khamgaon

(Laxmikant A. Bidwai)
Ad-hoc District Judge-1,
Khamgaon

certificate

I affirm that the contents of this P. D.F. file judgment are same word for word as per original Judgment.

Name of Steno	:	C. N. Mahale
Name of Court	:	Adhoc District Judge-1, Khamgaon.
Dictated on	:	12-06-2023
Typed on	:	13-06-2023
Checked on	:	13-06-2023
Signed on	:	14-06-2023
Uploaded on	:	14-06-2023