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Decided On	:	29.03.2025
Duration	:	09Y 02M 21D

IN THE COURT OF JOINT CIVIL JUDGE, SENIOR DIVISION, DHULE.
(Presided over by Shri K. B. Chougule)

Regular Civil Suit No.15/2016.

Exh. No.83

(CNR No. MHDH020000392016)

1. **The Nirwasi Cloth Merchants Association,
Dhule,**
(The Association registered as per
Maharashtra Public Trust Act, 1952
Registration No.E-154/1968)
R/o.:- Market No.3, Shankar Cloth Market,
Dhule, Through
2. **Shankarlal Meghraj Mandan,**
Acting President,
Age : 55 Years,
Occ : Business,
R/o.:- Shop No.5, Market No.3,
Shankar Cloth Market, Panch Kandil,
Mumbai-Agra Road, Dhule.
3. **Subhash Virbhan Relan,**
Acting Secretary,
Age : 57 Years,
Occ : Business,
R/o.:- Shop No.9, Market No.3,
Shankar Cloth Market, Panch Kandil,
Mumbai-Agra Road, Dhule.

...PLAINTIFFS.

.. Versus ..

1. **Dhule Municipal Corporation, Dhule,**
(Notice be served on the Commissioner,
defendant No.2),

2. **The Commissioner,**
Dhule Municipal Corporation, Dhule,
3. **In-charge Deputy Commissioner (Tax),**
Dhule Municipal Corporation, Dhule,
4. **Assistant Commissioner (Tax),**
Dhule Municipal Corporation, Dhule,
5. **Deputy Commissioner (Tax),**
Dhule Municipal Corporation, Dhule,
6. **The State of Maharashtra,**
(Notice be served on the Collector, Dhule) ...**DEFENDANTS.**

**SUIT FOR SPECIFIC PERFORMANCE, DECLARATION AND
PERPETUAL INJUNCTION**

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Appearances -

Shri A. G. Shah, the Ld. Adv. for the Plaintiffs.

Shri A. B. Shah, the Ld. Adv. for the Defendant No.1 to 5.

Exparte, against defendant No.6.

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JUDGMENT

(Delivered on :29.03.2025)

The plaintiffs seek relief of specific performance of lease agreement of market No.3, City Survey No.2913 situated in Dhule City within Municipal Corporation, Dhule, of which detailed description of boundaries is given in plaint, which is hereinafter referred to as “the suit property”. The suit property consists of open place and shops. The plaintiff society was given the suit property on lease basis by then Municipality Dhule. There are 73 shops and it is allotted by the plaintiff No.1 to its members for business purposes. On 01.07.1986 the suit property was given to the plaintiffs on lease basis for 30 years period. There is specific clause in the lease agreement for renewal of lease. On 23.02.2015 the defendant No.5 sent false notice

and sought to vacate the suit property. The plaintiffs gave reply on 11.03.2015. Thereafter the defendant No.5 again sent reply notice and reiterated its stand stating that, reply to earlier notice given by the plaintiffs is false and dishonest. The notices dated 23.03.2015 and 25.03.2015 are sought to be declared illegal. The plaintiffs are entitled for renewal of lease agreement. In this context, the plaintiffs claim that, they have right to claim specific performance of lease agreement. The declaration is sought regarding plaintiffs' entitlement to get perpetual lease and the notices issued by defendants are illegal. In the alternative, defendants be directed to make alternative arrangement for plaintiffs' rehabilitation.

2. The defendant No.1 to 5 file written-statement vide Exh.14. The defendant No.1 sought possession of the suit property for public purpose. The suit property was given on lease in the year 1985 and it was for 30 years period. The defendants need possession of the suit property for the development of the city. It is for the public welfare purpose, the defendant No.1 wants to erect commercial complex, therefore, plaintiffs are communicated to handover the possession of the suit property. The possession of the plaintiffs is unauthorized. There is no existence of agreement of which specific performance could be granted. Considering all legal and factual aspects, the suit is sought to be dismissed with costs.

3. The defendant No.6 is served with suit summons but did not appear. Hence, the hearing is proceeded *exparte* against defendant No.6.

4. The issues are framed vide Exh.27 on 27.03.2019. Those issues are reproduced alongwith findings and reasons thereon as under:-

<u>Sr. No.</u>	<u>ISSUES</u>	<u>FINDINGS</u>
1.	Whether this Court is having jurisdiction to try and entertain the present suit ?	...In the affirmative.
2.	Whether plaintiffs prove that suit property has been given to them on lease by defendants ?	...In the affirmative.
3.	Whether plaintiffs prove that as per agreement, they are entitled for renewal of lease ?	...In the negative.
4.	Whether plaintiffs prove that defendants No.4 & 5 and defendant No.3 issued illegal and void notices on 23.02.2015 and 25.03.2015 respectively ?	...In the affirmative.
5.	Whether plaintiffs prove that defendants are disturbing the possession of plaintiffs unlawfully ?	...In the affirmative.
6.	Whether plaintiffs are entitled for the reliefs, as claimed ?	...Partly in the affirmative.
7.	What order and decree ?	As per Final Order.

REASONS

AS TO THE ISSUE NO. 1 TO 7:-

5. The plaintiff No.1 is a society registered under the Bombay Public Trust Act, 1950. The plaintiff No.2 is the President and the plaintiff No.3 is Secretary of that society. The suit property was given to the plaintiff No.1 for doing business and settlement of its members by then Municipality, Dhule. There are 73 shops constructed and the members of the plaintiff No.1 society have been doing business of sale of clothes in the suit property since 1952. The Government of India

took initiative for rehabilitation of displaced persons following partition as the persons who were subjected to atrocities in Sindh province of Western Punjab. According to the plaintiffs the suit property is given on perpetual lease. On 01.07.1986, 30 years lease agreement came into existence and its tenure expired on 30.06.2016. The plaintiffs want the suit property for doing their respective business. On 23.02.2015 the defendant No.1 sent a notice and directed the plaintiffs to vacate the suit property as it is required for their use. According to the plaintiffs, they have been using the suit property since long time therefore they are entitled for renewal of further 30 years lease period.

6. It is specific case of the plaintiffs that, before expiry of valid lease period in 2016 on 23.02.2015 the defendants sent a illegal notice. The act of defendants is illegal and malafide. The plaintiffs rely on earlier lease agreements with defendants. The defendants justify proposed eviction of plaintiffs on the basis of order dated 15.04.1985 passed by the Divisional Commissioner and the Regional Director, Municipal Corporation Administration, Nashik. It reveals that, the plaintiff society was given the suit property for 30 years from 01.07.1986 and the yearly rent was Rs.19,000/-. It is given on certain conditions. One of the conditions states that, the defendant No.1 i.e. Municipality if requires the suit property may cancel the lease by sending one month prior notice.

7. On 23.02.2015 the defendants sent notice which is Exh.66 and sought recovery of possession of the suit property. It is stated that, for

beautification of the city, improving financial condition of the defendant No.1 Corporation, addressing traffic issue, creating employment and for constructing commercial complex the suit property is required. According to the plaintiffs the notice is illegal because it is in violation of terms of lease agreement. Before expiry of valid lease tenure the defendants had issued notice for vacation of suit property. The defendants contend that the order dated 15.04.1985 which allowed plaintiffs to occupy the suit property for 30 years, from 01.07.1986 is subject to terms and conditions contained in the order itself. The issuance of prior one month notice is one of the conditions. The defendants have retained their rights to get possession of the suit property. After issuance of notice dated 23.02.2015 till date plaintiffs have been in possession of the suit property. By order dated 15.04.1985 the lease period for thirty years began from 01.07.1986 expired on 01.07.2016. The defendant no.1 justifies its action stating that it has acted in accordance with law and no illegality is committed in seeking recovery of possession of the suit property.

8. The defendants contend that, no subsisting right exists in favour of plaintiffs to seek extension of lease period of the suit property. On the contrary plaintiffs assert that it had been practice by the defendants to extend lease period time to time. According to the defendants there is no any agreement between parties or any correspondence which could indicate that they had expressly or impliedly agreed to extend lease tenure of the suit property. Therefore, any unilateral demand or insistence for extension of lease period of the suit property cannot be foundation to claim continuation

of possession. The earlier practice of extension of lease tenure of the suit property cannot be basis to claim similar extension of lease of the suit property. This argument of the learned Advocate for defendants is not acceptable because the plaintiffs have been doing their respective business in the suit property since 1952 which reveals from cross-examination of one of the plaintiffs. Before expiry of last lease tenure of thirty years in 2016 there had been routine extension of lease agreement between plaintiffs and the defendant No.1. The cross-examination of the plaintiffs' witness namely Shankarlal Mandan, who is one of the shop holders of the plaintiffs' association, reveals that the suit property has been in possession of the plaintiff No.1 since 1952. The first resolution of lease in favour of the plaintiff No.1 was in 1952. Initially it was for one year and thereafter it continued to be extended for two years.

9. The controversy between parties is restricted to two specific issues. Firstly, whether a notice Exh.66 sent by defendants is legal and valid? Secondly whether plaintiffs are entitled for specific performance of agreement? These issues assume significance in the light of the fact that, the plaintiff No.1 / lessee who has been in continuance possession of the suit property since 1952 cannot be denied its right to seek extension of lease. It is not the case of the defendants that, the suit property is not in occupation of the plaintiffs or the plaintiffs have committed breach of lease agreement or the terms of order are violated. On the basis of previous extension of lease periods the plaintiffs get opportunity of being heard before the defendant No.1 intends to recover possession. It is legitimate

expectation of the plaintiff No.1 society to get extension of lease period based on consistent practice followed by both parties regarding the clause of extension of lease tenure. The claim of specific performance of contract cannot be decreed for want of necessary documents or implied acceptance of extension of lease by the defendant No.1.

10. As per Section 79 of the Bombay Provincial Municipal Corporations Act, 1949, the Commissioner may lease, sell, let out on hire or otherwise convey any property, movable or immovable, belonging to the Corporation. The plaintiffs rely on one of the clauses in the previous lease agreement. The last lease was granted by order and it expired on 30.06.2016. The previous lease agreements disclose that, after expiry of lease tenure if lessee does not want the premises then it would be vacated and handed over to the lessor. If lessee needs the premises then the lease would be renewed and a fresh agreement would be executed. The plaintiffs contend that issuance of notice dated 23.02.2015 by the defendants seeking eviction of the plaintiffs was not in accordance with the terms contained in the lease agreement. Therefore, the plaintiffs have vested right to claim renewal of lease and their continuation as a lessee in the suit property is not in breach of lease agreement.

11. The documents on record reveal that, notice issued by the defendant No.5 which is Exh.66 is not in accordance with Section 81-B of the Bombay Provincial Municipal Corporation Act, 1949. The Section 81-B clearly gives the procedure which requires to be followed

by the Commissioner. It states that, any Corporation premises in the occupation of any person if are required by the Corporation in the public interest then the Commissioner may by notice served by ----- Sub-section (2) clearly states that, the Commissioner shall issue notice of show cause as to why an order of eviction should not be made. The Commissioner may grant the extension of time to the noticee for filing written-statement and documents in pursuance of notice. The noticee is also entitled to appear before the Commissioner by Advocate, Attorney or other Legal Practitioner. The detailed procedure is prescribed under Section 81-B of the said Act for eviction of the person from the Corporation premises. The perusal of notice (Exh.66) issued by the defendant No.1 discloses the grounds on which the suit property is required, however, in support of the alleged grounds mentioned in the notice no evidence is adduced by the defendants. The defendants could have led some evidence in support of the alleged grounds mentioned in the eviction notice. The notice dated 23.02.2015 (Exh.66) issued by the defendant No.1 is not in tune with statutory mandate, therefore, it needs to be declared as illegal.

12. The learned Advocate Shri. A. G. Shah for the plaintiffs relies on the following case laws :-

1. Municipal Corporation of Greater Mumbai V/s. Rajendra Phulchand Gupta, in appeal from order (ST.) No.16017 of 2021, decided on 28.02.2022.

In this case, the Hon'ble Bombay High Court has held that, a civil suit for declaration that act of Corporation i.e. the notice issued by the Mumbai Municipal Corporation Act to show sufficient cause as to why alleged unauthorized construction should not removed or pulled down can be challenged before the Civil Court. The Civil

Court is not precluded of its inherent jurisdiction to entertain and decide challenge to the notice under Section 260 of the Act. In the present case, the plaintiffs challenge notice dated 23.02.2015 seeking eviction of plaintiffs from the suit property as the Corporation requires the suit property of its use. The grounds for challenge the notice are very clear that, the notice is not in accordance with Section 81-B of the Bombay Provincial Municipal Corporations Act, 1949. This case law supports the case of the plaintiffs as the suit is maintainable.

2. Sukhmani Motors Thr its Manager V/s. Nashik Municipal Corporation Thr its...2024:BHC-AS:38593, decided on 12.09.2024.

In this case, the Hon'ble Bombay High Court has held that, in eviction proceeding the Corporation is bound to lead evidence to support its contention that the premises is required in public interest. The Commissioner should pass reasoned order recording his satisfaction that the premises is required for public purpose. Chapter VIII-A is a complete Code in itself which contains summary procedure for eviction of persons from Corporation premises. The statutory scheme of Section 81-B of the Bombay Provincial Municipal Corporations Act, 1949, cannot be overlooked. As notice of eviction dated 23.02.2015 (Exh.66) contains specific grounds of necessity of premises from the plaintiffs for stated reasons. In order to support the alleged grounds in the notice defendants lead no evidence, therefore, issuance of notice is not in conformity with Section 81-B of the Act. This case law appears to be helpful to the case of the plaintiffs.

13. The plaintiffs have filed on record agreements of lease which time to time came to be extended. The lease agreements and the applications from plaintiffs for extension of lease are filed on record which are Exh.55 to Exh.62. On 19.03.1985 vide order No.63 the lease of the suit property was extended for 30 years from 01.07.1986. On 15.04.1985 vide Exh.64 lease of thirty years from 01.07.1986 was allowed by the Divisional Commissioner, Nashik Division, Nashik. On 13.05.1985 the plaintiffs sought to execute agreement of lease of the

suit property and prepared a draft lease agreement for approval of the Chief Officer, Municipal Corporation, Dhule (Exh.65 and Exh.66). However, the fact remains that, the draft lease agreement is not acknowledged by the defendant No.1. Therefore, it can be said that the conditions contained in the draft agreement do not bind the Corporation. The last order of the defendant No.1 Corporation specifically incorporates one of the conditions which states that, the Corporation has reserved its right to cancel the lease if it needed the suit property. The issuance of notice dated 23.02.2015 (Exh.66) by the Assistant Commissioner (Tax) does not contain any reference of valid lease of the suit property in favour of the plaintiffs. It states that, the period for which the suit property is given is expiring on 18.03.2015 and therefore the possession is sought by the defendant No.1.

14. The documentary evidence adduced by the plaintiffs shows that, there was routine practice of extension of lease from time to time. The office bearers of the plaintiffs' society were seeking extension of lease agreement. From 01.06.1970 to 31.05.1971 the lease agreement (Exh.55) was executed and the rent was fixed Rs.17,225/-per year. From 01.12.1973 to 30.11.1980 lease agreement (Exh.61) came to be executed by extending lease period in accordance with clause of extension of lease contained in the previous lease agreement i.e. Exh.55 and the annual rent was Rs.17,785/-. The plaintiffs sought extension of lease on the basis of extension clause contained in the lease agreement (Exh.61), however, the defendant No.1 instead of extending lease tenure passed order dated 15.04.1985 (Exh.64),

wherein thirty years lease was granted from 01.07.1986 and rent of Rs.19,000/-per year was fixed. The facts on record demonstrate that, the action of the defendants effectively caused prejudice to the plaintiffs because earlier practice of incorporating extension clause in the agreement was unilaterally and arbitrarily discontinued.

15. The learned Advocate Shri. A. B. Shah for the defendant No.1 to 5 relies on the following case law :-

Bombay Municipal Corporation V/s. Dhondu Narayan Chowdhary, 1965 AIR 1486.

In this case, the Hon'ble Bombay High Court has held that, under the chapter VI-A of the Municipal Corporations Act, the Commissioner delegated his powers under Section 68 of the Act when the eviction proceeding of a tenant was initiated by the Corporation. As per Section 68 powers delegated are subject to Commissioner's control and such delegation of power is held to be valid and legal. In the present case, the notice dated 23.02.2015 (Exh.66) was issued by Assistant Commissioner (Tax). According to the plaintiffs the issuance of notice is illegal since it is not as per Section 81-B of the Bombay Provincial Municipal Corporations Act, 1949. Therefore, the distinction becomes clear wherein the Commissioner who is bound to follow the procedure laid down in the section before passing eviction order. The notice dated 23.02.2015 is not in accordance with Section 81-B of the Act. Therefore, this case law is not helpful to the defendant No.1 to 5.

16. The defendants lead no evidence in support of specific grounds mentioned in the eviction notice dated 23.02.2015. In plaintiffs reply notice dated 11.03.2015 (Exh.67) defendants contend that they have right to recover the possession of the suit property for public welfare and therefore plaintiffs' possession in the suit property is illegal and unauthorized. When the lessee has been in continuous possession of the suit property since last more than fifty years and there has been

no breach of terms of lease then the burden lies on the defendants to prove grounds on which it seeks eviction of plaintiffs. The plaintiffs claim declaratory relief against the notice dated 23.02.2015 and 25.03.2015 issued by the defendant No.5. As discussed earlier, the notices are not in accordance with the Section 81-B of the Bombay Municipal Corporations Act, 1949, therefore, the suit for declaration is maintainable. The plaintiffs are not entitled for specific performance of contract as there is no evidence in support of acceptance of lease draft by defendants. For want of necessary correspondence to show that, the defendants had accepted the proposal of renewal of lease the decree for specific performance of unilateral draft agreement cannot be enforced. In view of this, the findings on the issue No.1, 2, 4 and 5 are answered in the affirmative, the findings on the issue No.6 are answered in the partly affirmative, the findings on the issue No.3 are answered in the negative and in answer to the issue No.7, the following order is passed.

ORDER

1. The suit is partly decreed with costs.
2. It is declared that, the notices issued on 23.02.2015 and 25.03.2015 by the defendant No.3 to 5 are illegal and void.

Dhule.

Dt. 29.03.2025

(K. B. Chougule)

Jt. Civil Judge Senior Division,
Dhule.

CERTIFICATE

I certify that the contents of this PDF File are word to word as per Original Judgment.

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