

Soni Jivram Jayram and ors. Vs. the Board of Trustees and ors.

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Court : Mumbai

Decided On : Aug-17-2011

Judge : P B Majmudar; R M Savant, Jj.

Acts : Bombay Rent Act - Article 14; [Constitution of India](#) - Article 226

Appeal No. : WRIT PETITION NO.989 OF 1996

Appellant : Soni Jivram Jayram and ors.

Respondent : The Board of Trustees and ors.

Advocate for Pet/Ap. : Ms.K C Nichani; Mr. Amit Seth, Advs.

Judgement :

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1. By way of this Petition, the Petitioners, who have already been evicted from the premises in question in execution of the decree passed against them in the year 1996, have prayed that as per the policy of the Respondents, their lease should be continued as they are ready to pay rent and the Respondents be directed to accept the Petitioners as their direct tenants in respect of Plot No.24, situated at Mazagaon Tank, Bunder Estate, Mumbai.

2 The disputed portion of land was originally let out by the Respondents-BPT to one Ishwarlal G Desai. The said I G Desai sub-let the portion of the plot to one M L Patel who in turn inducted the present Petitioners as his sub-tenants. The status of the Petitioners accordingly was a sub-tenant of a sub-tenant and there was no direct relationship as tenants and landlord between the Petitioners and the Respondents-BPT. It seems that in the year 1996, the Respondents-BPT filed a suit being BCCC Suit NO.4576/66 against the heir of original lessee I G Desai. The said suit was ultimately decreed in July 1980. At that time, the Respondents-BPT initiated proceedings for execution of decree but the Petitioners obstructed the same. In view of said obstruction, the Respondents filed Chamber Summons being No.871/82 for removing the obstruction raised by the Petitioners. In the said proceedings consent terms were filed by virtue of which the Respondent No.1 agreed to allow the Petitioners to occupy the premises on the terms mentioned therein. As per the said consent terms, the Petitioners had given an undertaking to quit and deliver vacant and peaceful possession of the suit premises to the Respondents without having to resort to execution on or before 31st March 1989. On the basis of said undertaking the Petitioners were permitted to occupy the suit premises up to 31st March 1989. Since the Petitioners did not vacate the premises, the decree was thereafter executed and the Petitioners have been dispossessed by virtue of execution of the decree for possession.

3 As pointed out earlier, the decree was passed against the original lessee and the Petitioners, who were inducted by the sub-tenant of the original lessee, obstructed the execution of decree for possession. In the meanwhile, some correspondence ensued between the parties. Before eviction, the Petitioners were directed to pay qualified rent with a view to see that their possession could be regularised. Since the Petitioners did not avail of the said offer given by the Respondents, as the Respondents agreed to consider the case of the Petitioners on payment of Rs.28.50 lakhs by them as escape rent i.e. the arrears of rent. It is not in dispute that the Petitioners did not deposit the said amount and went on corresponding and asked the Respondents as to on what basis the said figure was arrived at. Respondent No.1 accordingly thereafter executed the decree and obtained the

possession. It is pointed to us that in stead of depositing the entire amount of Rs.28.50 lakhs, the Petitioners deposited part of the amount being Rs.10.75 lakhs. The said amount was deposited on 1/6/89, 1/8/89 and 11/9/89. The aforesaid payment was made by the Petitioners while they were in possession of the premises and obviously they were required to pay the occupancy charges for occupying the premises. On the basis of such payment, the Petitioners tried to assert their right to get benefit of the lease being continued. It is not in dispute that the present Petition is filed by the Petitioners after they were evicted from the premises by executing the decree.

4 The learned counsel for the Petitioners has vehemently argued that Respondent No.1 may be directed to re-induct the Petitioners as lessees and continue to treat them as their tenants. It is submitted that since the Respondent No.1 had adopted a policy for accepting tenants and even sub- tenants on the basis of formula framed by Kirloskar Consultants by which rent is to be charged in a particular manner. The Petitioners by way of this Petition have prayed that the benefit of the said policy be given to the Petitioners and the Respondents may be directed to re-induct them as tenants in the premises in question and their lease may be continued. The learned counsel for the Petitioners relied upon the judgment of the Supreme Court in the case of Jamshed Hormusji Wadia v/s Board of Trustees, Port of Mumbai and anr. reported in (2004) 3 SCC 214.

5 The learned counsel appearing for the Respondents-BPT Shri Makhija submitted that the Petitioners were occupying the premises as sub- tenant of a sub-tenant. They had no legal right to continue or occupy the premises. It is submitted that a decree for possession was passed against original lessee, the Petitioners obstructed the same. Respondent No.1 had agreed to give some time to vacate the premises on an undertaking given by the Petitioners. In spite of the said undertaking, the Petitioners did not vacate the premises and therefore, Respondent No.1 executed the decree and obtained the possession. It is submitted that in the present case where the Petitioners were sitting as sub-tenants of a sub-tenant, the Respondents would have considered their case as per the policy and regularised their possession if they had agreed to pay the sum as

demanded from them. However, since the Petitioners have already been evicted from the premises in execution of the decree for possession, the learned counsel therefore submitted that the Petitioners are not entitled for the reliefs claimed. 6 We have heard the learned counsel for the parties at length and in our view, there is no substance in the Petition. Following factual aspects as such are not in dispute :-

(A) The Petitioners were occupying the premises at the relevant time as sub-tenants of a sub-tenant and they had no legal right to continue with the possession.

(B) A Civil Suit was filed by Respondent No.1 in the year 1966, in which decree for possession was passed against the Petitioners on 24/7/1980. There was no policy framed by the Respondents-BPT at that time to regularise the possession of tenants or sub-tenants.

(C) In the execution proceedings the Petitioners gave undertaking that they will quit, vacate and deliver vacant and peaceful possession of the suit premises to the Respondents-Original Plaintiffs by 31st March 1989. In spite of the same, the Petitioners did not vacate the suit premises. (D) The Respondents-BPT showed charitable approach by asking the Petitioners to deposit the escape rent i.e. arrears of rent of the erstwhile tenant. In stead of depositing the amount of rent i.e. Rs.28.50 lakhs, the Petitioners went on corresponding.

(E) It is not in dispute that Respondents have not framed any policy for the tenants and/or sub-tenants who have already been evicted from the premises of continuing their lease.

7 The learned counsel for the Petitioners fairly submitted that there is no policy that even if a person who has already been evicted, he can be retrospectively put back in possession and his tenancy can be continued. So far as reference to the decision of the Supreme Court in the case of Jamshed Wadia (Supra) is concerned, in the said case the Supreme Court has held that the BPT is a State within the meaning of Article 14 and even if Bombay Rent Act is not applicable,

they have to act reasonably. The issue involved in that case was regarding fixation of the quantum of rent. In that context, it has been held that the BPT cannot charge rent exorbitantly or arbitrarily like a private landlord. So far as issue involved in the present Petition is concerned, the same has no connection with the judgment of the Supreme Court as in the present case, the Petitioners are praying for restoration of their possession and benefit of the policy of the BPT as per which the BPT has agreed to regularise the possession of the tenants and/or sub tenants in a given case. 8 It cannot be disputed that on the basis of such policy, benefit cannot be given to the Petitioners as the Petitioners have already been evicted from the premises, in execution of the decree for possession. The policy is framed in order to protect the roof over the head of a person who is occupying the premises, may be a tenant or a sub tenant.

9 In our view, no mandamus can be issued directing the Respondents-BPT to restore the possession in favour of the Petitioners who have already been evicted long back and who has given an undertaking to this Court to vacate the premises simply because the policy is applicable to the sitting tenants and/or sub tenants and the person who has not been evicted, if he abides by the terms and conditions offered by the Respondents. By accepting the prayer of the Petitioners, it would amount to setting aside the decree for possession passed long back. The Petitioners in spite of undertaking given to vacate the premises, tried to flout the undertaking and ultimately have been evicted from the premises in execution of the decree for possession. In our view, jurisdiction under Article 226 of the [Constitution of India](#) cannot be exercised in favour of a person against whom a decree has already been passed and who has been evicted in execution of the decree. In our view, the Petitioners cannot be allowed to resume the premises by restoring the possession, as they have already been evicted as back as in the year 1996. The learned counsel for the Respondents-BPT submitted that in case BPT decides to let out the premises by public auction, the Petitioners can take part in such auction and on the basis of bid, premises would be given to the person who is the highest bidder. For the reasons mentioned herein above no reliefs can be granted to the Petitioners. The Writ Petition is accordingly dismissed. Rule discharged.

