

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7218 OF 2017

Nashik Gramin Shikshan Prasaramandal
Through its Director
Shri Rajaram Panghavane Patil ...Petitioner

Versus

Nashik Municipal Corporation ...Respondent

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Mr. Anil Anturkar, Senior Advocate i/b. Mr. Sugandh B. Deshmukh for
the Petitioner.

Mr.Vaibhav P. Patankar for the Respondent.

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CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JUNE 30, 2017

P.C. :

1. Not on board. Upon mentioning, taken on board.
2. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.
3. This petition is directed against the order dated 19.10.2016 passed by the learned 5th Joint Civil Judge, Senior Division, Nashik thereby rejecting the application below Exhibit 10 in Regular Darkhast No. 45 of 2016 filed by the petitioner/original plaintiff.
4. The petitioner/original plaintiff is running various schools, colleges as well as the educational activities on the suit property, which is owned

by the Municipal Corporation. There was an agreement between the petitioner/original plaintiff and the respondent/original defendant. On 20.05.2010, the agreement was executed for the period of 5 years with a condition to renew upto 30 years. As per the said agreement, six months prior to Sinhasta Kumbh Mela, the possession of the suit property was to be handed over to the Municipal Corporation by the petitioner/original plaintiff. Prior to that, the petitioner/original plaintiff had filed Regular Civil No. 394 of 2014. In the said Suit, the parties have entered into the compromise and the compromise pursis was filed on 19.07.2014 by both the parties. Pursuant to the said compromise pursis, it was agreed that the possession would be handed over to the petitioner/original plaintiff after Sinhasht Kumbh Mela. The possession of the suit property was handed over on 30.11.2014 by the petitioner/original plaintiff to the respondent/original defendant. Thereafter, the suit property was not again handed over to the petitioner/original plaintiff. Therefore, the petitioner/original plaintiff had filed Regular Darkhast No. 45 of 2016 on the basis of the decree, which was drawn as per the Consent Terms. In the said Darkhast, the petitioner/original plaintiff had filed an application below Exhibit 10 under Order 21 Rule 35 of the Code of Civil Procedure praying for issuance of possession warrant in favour of the decree holder.

However, the said application was rejected by the learned trial Judge. Hence, this Writ Petition.

5. The learned senior counsel for the petitioner has submitted that as per the compromise pursis, the lease agreement was entered into between the parties on 20.05.2010, which has come to an end in May 2015. However, as per clauses mentioned in the agreement dated 20.05.2010, the petitioner/original plaintiff was supposed to hand over the suit property six months prior to Sinhast Kumbh Mela. However, it was handed over prior to six months i.e. on 30.11.2014. He read over the relevant portion in the compromise pursis and has submitted that if the wordings in the pursis are strictly interpreted, then it was binding on the respondent/defendant to return the said property on preferential basis to the petitioner/original plaintiff, otherwise the word "return" would not have used in the said compromise pursis. However, Sinhast Kumbh Mela was over and the Municipal Corporation has not been taken decision of entering into a lease agreement and handing over the suit property to the petitioner/original plaintiff which is breach of the consent terms. This fact ought to have been considered by the learned Execution Court and possession warrant would have been issued.

6. The learned counsel for the respondent while opposing this petition has relied on the said compromise pursis and has submitted that the suit property is owned by the Municipal Corporation and the Municipal Corporation has to decide the new rules and conditions in respect of fixing charges or fees of the lands, which are going to be given on lease. He has further submitted that whenever the Municipal Corporation will take decision to lease out the suit property, at that time the Municipal Corporation is bound to offer the said property to the present petitioner/original plaintiff on preferential basis and thus the terms and conditions of the compromise pursis are not violated and therefore, the trial Court has rightly rejected the said application seeking possession warrant in favour of the petitioner/original plaintiff.

7. Heard submissions. Perused the documents, agreement dated 20.05.2010 and the compromise pursis dated 19.07.2014. I am not in an agreement with the submissions made by the learned senior counsel for the petitioner. The Marathi word “parat” (return) cannot be read in isolation but with context. It means it would be returned, but it does not indicate immediately; it is subject to other factors like fixing rates and taking decision etc. The submissions made by the learned counsel for the respondent are accepted. Considering the terms and conditions mentioned and agreed therein by the parties, the order passed by the

learned trial Judge cannot be faulted with. Hence, Writ Petition is dismissed summarily.

8. Writ Petition is dismissed accordingly.

(MRIDULA BHATKAR, J.)