
(2023) 01 BOM CK 0052

Bombay High Court

Case No: Writ Petition No. 13068 Of 2019, Interim Application No. 06 Of 2020

M/s. Venus Rubber
Works

APPELLANT

Vs

Municipal Corporation
Of Greater Mumbai And
Others

RESPONDENT

Date of Decision: Jan. 11, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 227

Citation: (2023) 01 BOM CK 0052

Hon'ble Judges: Milind N. Jadhav, J

Bench: Single Bench

Advocate: Krishna K. Holambe Patil, Vishal G. Shirsat, Vishal G. Shirsat, Om Suryawanshi,
Jeetendra Ghadge, Rajesh Parmar

Final Decision: Allowed/Disposed Of

Judgement

Milind N. Jadhav, J

1. By the present Writ Petition filed under Article 227 of the Constitution of India, Petitioner has prayed for the following reliefs:-

“(b) This Hon’ble Court may be pleased to call for the recording and proceedings of L.C. Suit No.402 of 2018 pending before the Hon’ble

City Civil Court at Bombay and after going through the legality and validity of the same be pleased to quash and set aside the order dated 16th

September 2019 passed below Exhibit “7” - Application therein and further be pleased to allow the said Application vide Exhibit “7” and

direct Respondent No.1 to not to call upon the Petitioner to produce the documents namely (i) NOC from the landlord, (ii) property UID number and

(iii) latest property tax bill and without calling the Petitioner to produce these documents, the Trade License bearing No.761091838 (Old License

No.D58686) of the Petitioner be renewed.Ã¢â€â€

2. Petitioner is a registered partnership firm since 1959. In the year 1969, Petitioner became sub-tenant of the suit shop viz. Shop No.2 situated on the

ground floor, Building No.43, JSS Road, Kennedy Bridge, Opera House, Mumbai. The partnership of Petitioner after a series of events between 1969

and 2015 was reconstituted and presently Nilesh Oza, Jyotiben Oza (mother) and Rita Oza (wife) are partners of Petitioner firm. Petitioner carried on

business of auto spare parts in the suit shop.

3. Record indicates that Shri. Parekh Estate Pvt. Ltd. is the landlord of building No.43. Record further indicates that one Mr. Baburao Ghadge was

the tenant of the suit shop. However, since Mr. Baburao Ghadge sublet the front portion of the suit shop to Petitioner and occupied the rear portion of

the suit shop, the landlord filed R.A.E. Suit No.2070 of 1970 against Mr. Baburao Ghadge and Petitioner seeking their eviction from the suit shop.

After trial, the suit came to be dismissed by Judgment and Order dated 05.03.1999. Appeal before the Appellate Court also came to be dismissed. The

learned Small Causes Court held that Petitioner was not in unlawful possession of the suit shop.

4. The issue in the present Petition however pertains to renewal of license of Petitioner to carry on its business of rubber goods from the suit shop.

Originally Petitioner obtained a license from the License Department of Municipal Corporation of Greater Mumbai i.e. Respondent No.1 (for short

Corporation") on 05.01.1970. The said license was renewed and revalidated regularly until 31.12.2014 by the Corporation.

5. Sometime in the year 2013 Respondent No.2, a neighbour of Petitioner filed a complaint with the Corporation stating that Petitioner's possession of

the suit shop is illegal and the rubber goods sold therein are hazardous. Acting on this complaint, Corporation issued a notice dated Nil December 2013

to Petitioner and called upon the Petitioner to produce the latest rent receipts and no-objection certificate from the landlord. The notice was replied by

the Petitioner, inter alia, stating that Respondent No.2 was harassing the Petitioner.

6. Corporation issued fresh notice dated 16.01.2014, inter alia, calling upon the Petitioner to produce original rent receipt for verification. Respondent

No.2 filed its reply to the same once again stating that the Petitioner was harassed by officers of the Corporation at the instance of Respondent No.2.

7. By letter dated 10.04.2014, Corporation cancelled the license of the Petitioner in view of non submission of the document regarding possession of

Petitioner in respect of the suit shop. Petitioner approached the Corporation and after hearing the Petitioner, cancellation of license was revoked and it

was renewed on 25.07.2016 for a period of one year w.e.f. 01.07.2016.

8. On 14.03.2016, Petitioner informed the Corporation about the death of his father (partner) and formation of new partnership. Petitioner also

enclosed alongwith the letter the old partnership deed, the new partnership deed, Form 1 of Indian Partnership Act, 1932 copy of rent receipt

of Small Causes Court vide which rent was paid to the landlord upto April 2016. Corporation thereafter called upon the Petitioner to produce the

registered partnership deed for grant of license. On 25.07.2016, Petitioner complied with the requisitions of the Corporation.

9. On 19.09.2016, Corporation asked Petitioner to submit an extract duly certified by the Registrar of firms indicating details of outgoing and incoming

patterns. Petitioner accordingly sought the information from the Registrar as required by the Corporation. On 20.10.2016, Corporation issued a Show

Cause Notice to Petitioner for showing cause as to why the license should not be cancelled on account of failure to produce the extract duly certified

by the Registrar of firms. On 10.11.2016, Corporation cancelled the license of the Petitioner.

10. Petitioner instituted L.C. Suit No.402 of 2018 in the Bombay City Civil Court alongwith Notice of Motion No.698 of 2018 seeking ad-interim /

interim reliefs. By order dated 03.09.2018, the Notice of Motion No.698 of 2018 was made absolute and Petitioner was directed to approach Corporation

for renewal of trade license. Petitioner accordingly approached the Corporation seeking renewal of the license. By letter dated 25.09.2018

Corporation called upon the Petitioner to produce 10 documents as stated in the said letter as a pre-condition for renewal of / revocation of the

cancelled license.

11. According to Petitioner, three of the conditions mentioned therein i.e. NOC from landlord, property UID number and latest property tax bill could

not be produced by the Petitioner as they were not within his domain considering that the dispute and suit between the landlord and Petitioner was

pending in the Small Causes Court. In that view of the matter, it was contended by Petitioner that NOC from the landlord could not be procure. Being

aggrieved, Petitioner filed Application dated 10.10.2018 (Exhibit A-1) before the learned Trial Court for relief. Corporation has filed the reply to

the said Application.

12. By the impugned order dated 16.09.2019, the learned Trial Court rejected the Application on the ground that the Petitioner had an appropriate

remedy before the Corporation and the Application was not tenable.

13. Hence, the present Writ Petition.

14. Mr. Holambe Patil, learned Advocate appearing on behalf of Petitioner submitted that this is not a case of seeking a fresh license from the

Corporation in respect of the suit shop to carry on business of rubber goods. He submitted that Petitioner partnership firm was established in the year

1959 and has continued in occupation of the suit shop since then. He submitted that the landlord i.e. Shree Parekh Estate Pvt. Ltd. had filed RAC No.

2070 of 1970 against the Petitioner and one another person seeking eviction from the suit shop. That after a trial the suit came to be dismissed by

Judgment and Order dated 05.03.1999. The Appellate Court upheld the said Judgment and decree passed by the learned Trial Court in Appeal No.290

of 2000 and thus the said Judgment dated 05.03.1999 had attained finality. It has not been further challenged by the landlord. He submitted that there

is a categorical finding returned in the above Judgment and order concluding that the Petitioner is not in unlawful possession of the suit shop.

14.1. That apart, he submitted that in so far as the present lis is concerned, Corporation granted the license to Petitioner on 05.01.1970 and the said

license has been renewed and revalidated from time to time. According to Petitioner, there is no dispute in respect of this fact until the cancellation of

the license by the Corporation on 10.11.2016 pursuant to which the Corporation has refused to renew the license on account of non-compliance of

three out of the ten conditions imposed by the Corporation in its letter dated 25.09.2018. He submitted that one out of the three conditions is such that

Petitioner being a tenant of the suit shop cannot comply since suit proceedings are pending between the landlord and tenant in the Small Causes Court.

He submitted that under an order passed by the learned Small Causes Court, Petitioner has been allowed to pay the rent under order dated

16.07.2015. Petitioner has deposited rent in the Small Court Court and is doing so without default. He submitted that the suit is pending before the

learned Small Causes Court seeking declaration of tenancy by the Petitioner.

14.2. In view of the above, he submitted that the action of the Corporation is malafide and is at the behest of Respondent No.2. He submitted that

Respondent No.2 is a neighbour residing in Room No.4 on the ground floor of the building and is related to Baburao Ghadge. He submitted that in

view of the Judgment and decree dated 05.03.1999 passed in R.A.E. Suit No. 2070 of 1970 and which has been upheld by Appellate bench of the

Small Causes Court, Respondent No.2 would have no locus whatsoever in the suit shop. However to harass the Petitioner, Respondent No.2 has

repeatedly filed complaints with the Corporation and the Corporation has refused to renew / revoke the cancelled license of the suit shop by imposing

onerous conditions. He has therefore prayed for the setting aside of the impugned order.

15. PER-CONTRA, Ms. Kapadia, learned Advocate appearing for Respondent No.1
" Corporation has drawn my attention to the Affidavit-in-

Reply dated 28.01.2020 and contended that the Respondent's Officer i.e. Senior
Inspector, License, " Ward of the Corporation received

complaints from Respondent No.2 regarding carrying on illegal rubber business in the suit
shop without obtaining NOC from the landlord. She

submitted that Petitioner has submitted the registered partnership deed and thereafter the
Respondent's Officer of the Corporation has called upon

it to produce the rent receipt to prove title to the said shop and NOC from the learned
Small Cause Court in respect of paying rent in the Small Causes

Court. According to the Corporation, Petitioner has not produced the rent receipt and the
NOC. She further submitted that pursuant to the letter

addressed to Petitioner to produce the requisite documents, Petitioner has not produced
the same and it appears that Petitioner is not interested in

seeking cancellation of the license. She submitted that Petitioner is required to produce
the three documents namely NOC from the landlord, property

UID number and the latest property tax bill for seeking renewal of the license. With the
above submissions, she has sought dismissal of the present

Writ Petition.

16. Respondent No.2 who is appearing in person has submitted that the Petitioner is
required to comply with the statutory provisions and required to

produce the relevant documents for seeking renewal / revocation of the cancelled license
in respect of the suit shop. When specifically asked about

the locus of Respondent No.2 in the present case, he submitted that he is a social activist
and concerned with ensuring that due process of law is

followed by the Petitioner and the Corporation in respect of procuring the license. He
submitted that in the present case suit proceeding were indeed

pending between the Petitioner and the landlord in the Small Causes Court and trial was
underway. According to him, Petitioner has sought

declaration of tenancy in a RAD Suit proceeding filed in the Small Causes Court. In that view of the matter, he has supported the Corporation and the impugned order.

17. I have perused the impugned order and the pleadings placed before me with the able assistance of Mr. Holambe Patil, learned Advocate for

Petitioner and Ms. Kapadia, learned Advocate for Respondent No.1- Corporation.

18. At the outset, it may be stated that for want of three documents namely NOC from the landlord, property UID number and latest property tax bill

the Petitioner has been denied the license which it was holding since 1970. It is seen that in so far as property UID number and latest property tax is

concerned, Petitioner being a tenant of the suit shop cannot be in possession of the said documents and information. Admittedly, both these documents

are issued by and maintained by the Corporation itself. The Property / Estate Department of the Corporation has the details of these two documents.

Hence, the Officer of the License Department cannot insist that Petitioner who is the tenant of the suit shop furnish these two requirements for

seeking the license. It is required to be noted that Petitioner has not applied for seeking license as a fresh case. In fact, since 1970 Corporation has

granted license to the Petitioner which has been renewed and re-validated time and again on compliances made by Petitioner until 2016. Admittedly,

the property UID number and the property tax bill would be in respect of the same property. It may be noted that considering that the suit shop is

situated on the ground floor of the building belonging to the landlord, the latest property tax bill and UID number would be in the knowledge and know

how of the landlord itself. That apart, considering the digitization of the property records, the property UID number and the latest property tax bill

would also otherwise be available online. However, if the License Department so insists, then the License Department can procure the same from the

Estate Department of Ward. Hence, on account of non furnishing property UID number and latest property tax bill the license of Petitioner

cannot be withheld by the Corporation.

19. In so far the NOC from landlord is concerned, record indicates that affidavit dated 20.12.2022 has been filed pursuant to directions given by this

Court earlier. The contents of the said affidavit are an answer to satisfy the pre-condition for seeking an NOC from the landlord. Admittedly, RAD

Suit is pending between the parties in the Small Causes Court and in such a situation the landlord which is a company itself cannot be expected to give

its NOC to the Petitioner. Once the Petitioner proves that he is paying rent in the Trial Court under the order passed by the Trial Court in respect of

the suit shop, his possession of the suit shop stands proved and NOC from the landlord has to be dispensed with in view of the pending RAD Suit. On

09.12.2022, after hearing the parties this Court passed the following order:-

“1. Mr. Holambe Patil, learned Advocate for Petitioner submitted that he shall file affidavit in response to the averments made in paragraph

No.8 of the affidavit filed by Respondent No.1 and place on record all such details with respect to the Petitioner having been directed by the learned

Small Causes Court to pay the rent in respect of the suit premises in the Court. That apart, this Court has perused the list of requirements called for by

the Municipal corporation of Greater Mumbai which is at Page 163 of the Petition, out of which the outstanding three requirements at Sr. Nos.5, 9 and

10 are to be complied with according to the Respondent No.1. Mr. Patil has urged that in view of the pending R.A.D. Suit in the Small Causes Court,

Petitioner is unable to comply with the same. That apart, according to him for grant of trade license, the aforesaid three requirements are not

mandatory.

2. Let the affidavit be filed within a period of two weeks from today.

3. Stand over to 23rd December, 2022.

20. Pursuant to the same, affidavit has been filed. Perusal of the order dated 16.07.2015 appended to the affidavit of compliance shows that since the

landlord itself has not specially denied about the earlier litigation and Judgment and Order passed in R.A.E. Suit No.2070 of 1970, the learned Trial

Court has restrained the landlord from obstructing possession of Petitioner in the suit shop without following the due process of law and allowed the

Petitioner to deposit the rent as sought and permitted him to continue to deposit the monthly rent on or before the 10th day of each succeeding month

till disposal of the Suit. It is also stated in the Affidavit that Petitioner is depositing the monthly rent in the Small Causes Court regularly and there is no

default. The latest copy of payment of receipt issued by the Small Causes Court as on 06.04.2022 is appended to the Affidavit. Hence, possession of

the Petitioner is proved. That apart, Petitioner has submitted all the other relevant documents stated in the letter of compliance issued by the

Corporation. Ms. Kapadia has confirmed this fact.

21. In so far as Respondent No.2 is concerned, it is held that he has no locus whatsoever to be heard in the present Writ Petition. It appears that

Respondent No.2 is related to the original tenant of the suit shop whose name was Baburao Ghadge. If that be so and if the Respondent No.2 is

aggrieved for any reason, he is at liberty to take out appropriate proceedings as available to him in law to challenge the previous order passed by the

Small Causes Court. Needless to state that Corporation shall therefore grant license to the Petitioner strictly in compliance and law and all such

conditions save and except three conditions which stand dispensed with by virtue of the order. It clearly appears that the License Officer / Inspector

of the Corporation has in collusion with Respondent No.2 is guilty of harassing the Petitioner. Hence, it is directed that Corporation shall not insist on

compliance of the three conditions and grant the license to the Petitioner on compliance of the other conditions, until the disposal and outcome of the

pending RAD Suit.

22. In view of the above observations and findings, it is clear that Petitioner has made out a case for restoration of the trade license No.761091838

(D/58686) for keeping rubber goods in the suit shop.

The insistence of the Corporation in its letter dated 25.09.2018 that the NOC from landlord is one of the requirements is specifically dispensed with in

view of the above findings. The Corporation shall not insist on compliance of the conditions at Sr. No.5, 9 and 10 in its letter dated 25.09.2018 and

accordingly process and grant the application for seeking restoration of license of Petitioner within a period of two weeks from today if the other

conditions are complied with in accordance with law.

23. With the above directions, Writ Petition is allowed.

24. In view of disposal of the Writ Petition, pending Interim Application No.6 of 2020 does not survive and is accordingly disposed.