

2023 SCC OnLine Bom 1382

In the High Court of Bombay at Goa  
(BEFORE M.S. SONAK, J.)

Bertalinha Lourenco ... petitioner;

*Versus*

John Lourenco and Others ... Respondents.

Writ Petition No. 228/2021

Decided on July 10, 2023, [Reserved on : 6<sup>th</sup> July 2023]

Advocates who appeared in this case:

Mr. S. D. Padiyar with Mr. P. Shirodkar and Ms A. Rane, Advocates for the Petitioner.

Mr. J. J. Mulgaonkar, Advocate for Respondent No. 1.

Mr. J. Abreu Lobo, Advocate for Respondent No. 3.

Mr. Pranay Kamat, Advocate for Respondent No. 4.

The Judgment of the Court was delivered by

M.S. SONAK, J.:— Heard Mr. S. D. Padiyar for the petitioner, Mr. J. J. Mulgaonkar for respondent no. 1, Mr. J. Abreu Lobo for respondent no. 3 and Mr. Pranay Kamat for respondent no. 4.

2. This petition was considered along with the connected Writ Petition No. 912/2019. However, since the issue involved in the present Writ Petition is slightly different, the same is disposed of by a separate judgment and order.

3. Rule. Rule is made returnable immediately at the request of and with the consent of the learned counsel for the parties.

4. The challenge in this petition is to the order dated 15.01.2016 made by the Commissioner, Corporation of the City of Panaji (CCP) and the order dated 14.05.2020 made by the Principal Secretary, Urban Development dismissing the petitioner's application dated 31.01.2014 for transfer of trade license in her name consequent upon the death of her husband, Domingos Lourenco.

5. One of the reasons the Principal Secretary Urban Development dismissed the petitioner's appeal against the Commissioner's order dated 15.01.2016 was that the Revisional Authority under the Rent Act had made an order dated 26.07.2019 ordering the eviction of the petitioner and her children from the suit premises through which the petitioner operated a printing press under the name and style of "Popular Printing Press".

6. By a separate Judgment and Order in Writ Petition No. 912/2019, the Revisional Authority's order dated 26.07.2019 is set aside and

remanded to the Revisional Authority for fresh consideration. Based upon this development, at least the impugned order dated 14.05.2020 made by the Principal Secretary of Urban Development will have to be set aside.

7. The suit premises regarding which the petitioner applied for the trade license belonged to respondent no. 3, Paulino Dias D'Souza. There is a dispute about whether the petitioner and her children are the exclusive tenants of the suit premises or whether John and his wife Olga are also the tenants along with the petitioner Bertalinha and her children. However, there is no dispute that the petitioner is at least a co-tenant regarding the suit premises.

8. Mr. Padiyar submitted that by a document of 01.07.1962, the predecessor-in-title of Paulino Dias D'Souza leased out the said premises to her husband, Domingos Lourenco. Upon his demise in 1990, the petitioner Bertalinha and her children claim the sole tenancy to the suit premises from where they run and operate the printing press "Popular Printing Press".

9. On the other hand, Mr. Lobo, learned counsel for Paulino (landlord), submits that the document of 01.07.1962 is not signed by any of the parties or the same is a forgery. He submits that the suit premises were leased to Jose Caetano Gonsalo Lourenco. Upon his demise, the tenancy was inherited by Domingos Lourenco and John Lourenco. Thus, Mr. Lobo submits that Domingos and John were co-tenants of the suit premises. Based on this, Mr. Lobo submits that the petitioner cannot claim sole tenancy by excluding John and Olga.

10. Mr. Padiyar submitted that the trade license was in the name of Domingos. However, without notice, the CCP transferred the same in John's name. Mr. Lobo states that ultimately the trade license issued in John's name was also withdrawn by the CCP. The petitioner and John filed appeals before the Principal Secretary, Urban Development, which were dismissed by the impugned order dated 14.05.2020.

11. The CCP should not ordinarily concern itself with complex title disputes or disputes as to whether the petitioner is the exclusive tenant or she is the tenant along with John. If the material on record shows that Domingos had the tenanted premises and was operating a printing press therein, then, upon his demise, ordinarily, the trade license could always be issued/transferred favouring his legal representatives, i.e. the petitioner and her children following the rules in this regard.

12. For deciding the issue of trade license, the CCP Commissioner is not ordinarily expected to go into complex disputes of title or entitlement. A *prima facie* assessment of such issues is all that is expected. By issuing the trade license, it is not as if the CCP is recognising the ownership or tenancy rights of any party or de-recognizing such rights of the other parties. The CCP Commissioner

ignored this principle before making the order dated 15.01.2016 and dismissing the petitioner's application dated 31.01.2014.

13. Accordingly, it is only appropriate that the impugned orders dated 15.01.2016 and 14.05.2020 are set aside, and the matter is remanded to the CCP Commissioner to decide the petitioner's application dated 31.01.2014 for grant/transfer of trade license to the petitioner.

14. The CCP Commissioner must dispose of the petitioner's application dated 31.01.2014 as expeditiously as possible after due compliance with the principles of natural justice. This means the CCP Commissioner must hear the petitioner, the landlord, Paulino Dias D'Souza and Mr. John Lourenco. If Mr. Carlos Lourenco or any other children of the petitioner wish to be independently heard, they are granted the liberty to apply to the CCP Commissioner. All parties' contentions are left open.

15. Until the Petitioner's application is decided, the printing press operations from the suit premises must not be disturbed by the CCP. The Petitioner must pay the necessary taxes etc., to the CCP without claiming any equities. The Petitioner must deposit Rs. 75,000/- with the CCP within 30 days on account. This amount shall abide by the Commissioner's final orders on the Petitioner's application.

16. The rule is made absolute in the above terms. There shall be no order for costs.

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