

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6004 OF 2018

Mrs.Sharmila Dattatraya Gaikar **Petitioner**

VERSUS

Panvel Municipal Corporation **Respondent**

Mr. Rajiv Patil, Senior Advocate, a/w. Ms.S.S.Thakur for the Petitioner.

Mr.Jagdish G.Reddy (Aradwad) for the Respondent.

CORAM : ROHIT B.DEO, J.

DATE : 7TH JUNE, 2022

P.C:-

The petitioner is the plaintiff in Special Civil Suit No. 263 of 2017 which is brought for recovery of compensation, declaration and injunction.

2. In brief, the case of the plaintiff is that she was granted licence by the Panvel Municipal Council aqua fishing rights at Wadale Tank and a formal agreement dated 16th June, 1987 was executed. According to the plaintiff, she continued to be in possession of the tank and the hut constructed on its banks till 2016-17 when the Municipal Council

was converted into Corporation which demolished the hut and prevented the plaintiff from exercising the right to fish at the said tank.

3. The plaintiff sought injunctive relief in the nature of restraint order against the Corporation in respect of the alleged possession qua the tank. The learned trial judge was pleased to reject the application under Order 39 Rules 1 and 2. The plaintiff approached the District Judge – 3, Raigad-Alibaug in Misc. Civil Appeal No. 1 of 2018 which is rejected by the judgment dated 5th March, 2018.

4. Having heard the learned senior counsel Mr.Patil, I see no reason to interfere in exercise of writ jurisdiction.

5. The Courts below have concurrently held that the agreement in favour of the plaintiff came to an end on 31st May, 2008. In any event, the agreement merely grants a licence and the well entrenched position of law is that a licensee has no possessory right as such in the subject matter of the licence and after the expiry of the licence, cannot be heard contending that he should not be evicted or dispossessed. The Appellate Court has further held against the plaintiff invoking the

principle of equity on the premise that even after the term of the licence ended on 31st May, 2008, the plaintiff merrily continued to enjoy the fishing rights without making any payment whatsoever to the Authority. Be that as it may, it would not be necessary to delve deeper. I am satisfied that there is irrefutable material on record to show that the plaintiff has no existing right as such and cannot seek an injunctive relief against the Corporation in respect of fishing right, the licence which has undoubtedly expired.

6. I see no reason to interfere with the concurrent findings recorded. The discretion exercised is neither arbitrary nor is vitiated by any error, either of law or fact. The petition is dismissed.

[ROHIT B.DEO, J.]