

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CW-263-2020

Maberest Hotels Pvt. Ltd.

A company registered under the Indian Companies Act, 1956, with registered office at Hotel Fidalgo, 18th June Road, Panaji- Goa,

Represented in this Act by its authorised signatory Sah devsinh Kiritsinh Zala Son og Kiritsinh Zala duly constituted by Board Resolution dated 23-09-2020, Major in age, India National, Residing at Mehboob Apartment, 3rd floor, Wadle Bhatt, Teleigao, Panaji- Goa.

..... Petitioner

V/s.

- 1 The Goa Tourism Development Corporation, A company registered under the Indian Companies Act, 1956, with office at Paryatan Bhavan, Patto, 3rd floor, Panaji – Goa,
- 2 The General Manager (Eng.) and the Estate Officer,

Goa Tourism Development
Corporation, with Office at
Paryatan Bhavan, Patto, 3rd Floor, Respondents
Panaji- Goa.

Mr. J.E. Coelho Pereira, Senior Advocate with Mr. D.
Fernandes, Advocate for the petitioner.

Mr. Shivan Desai, Advocate for the respondent nos.1 and 2.

CORAM : M.S. SONAK &

SMT. M.S. JAWALKAR, JJ.

DATE : 12TH OCTOBER,2020.

ORAL ORDER : (*PER M. S. SONAK, J.*)

1. Heard Mr. J.E. Coelho Pereira, learned Senior Advocate who appears along with Mr. D. Fernandes, learned Advocate and Mr. Shivan Desai, learned Advocate for the respondent nos.1 and 2.

2. The challenge in this petition is to the notice dated 16/09/2020 issued under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act,1968 (“the Act”, for short) requiring the petitioners to show cause as to

why certain orders under the said Act including, orders for payment of arrears and eviction be not made against the petitioners.

3. Mr. J.E. Coelho Pereira, learned Senior Advocate for the petitioners submits that the impugned notice is ex-facie without jurisdiction and therefore, this Court, should, at this stage itself interfere with such notice. He points out that the record indicates that the petitioner is in settled possession of the suit premises, in pursuance of the License Agreement dated 19/05/2011. He points out that the respondents attempted to unilaterally increase the license fees and on the basis of such unilateral increase, is now demanding arrears, which are, in fact, not due. He refers to the provisions in clauses 15 and 16 of the License Agreement and submits that for a period of at least 21 years, there was no question of any revision in the license fee amount. He submits that the petitioners have already filed the commercial suit, which is pending before the Commercial Court. He points out, that in the such circumstances, any summary remedy under the Public

Premises Act is not at all appropriate and in fact, without jurisdiction.

4. Mr. Pereira, learned Senior Counsel relies upon the decision of the Hon'ble Supreme Court in the case of **Kaikhosrou (Chick) Kavasji Framji and another v/s. Union of India and another** reported in AIR 2019 SC 1692 as well as the decision of Hon'ble Supreme Court in **Whirlpool Corporation v/s. Registrar of Trade Marks, Mumbai and others** reported in 1998 (8) SCC page 1.

5. Mr. Pereira, learned Senior Counsel also points out that in the civil suit, initially, the respondent–Corporation had undertaken would not seek to dispossess the petitioner otherwise than by the due process of law. Thereafter, his undertaking was modified to submit that the respondent–corporation will not dispossess the petitioner otherwise than by following the process prescribed under the Public Premises Act. For all these reasons, Mr. Pereira, learned Senior Counsel submits that the impugned notice may be interfered with at this stage itself.

6. Mr. Shivan Desai, learned Counsel for the respondents no.1 and 2 points out that at this stage only a notice has been issued under the Public Premises Act and whatever defences the petitioner may have, they are, at liberty to raise before the Estate Officer. He points out that no case of any lack of jurisdiction is made by the petitioner, therefore, this petition may be dismissed. He points out that the petitioners, have also instituted a commercial suit even though, according to the respondent- Corporation, such a suit may not even be maintainable in the facts and circumstances of the present case.

7. Mr. Desai, learned Counsel points out that the facts in the decisions relied upon by the petitioners, are totally distinguishable and no resemblance whatsoever of the facts involved in the present matter. For all these reasons Mr. Desai submits that the petition may be dismissed.

8. We have heard the rival contentions. The position of law as clarified in the decision in Whirlpool(supra) is that this Court, indeed has the jurisdiction to interfere with a

notice or a Show Cause Notice provided the following three circumstances are made out:

- a. where the Writ Petition has been filed for the enforcement of any of the Fundamental rights; or*
- b. where there has been a violation of the principle of natural justice; or*
- c. where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged*

9. In this case, the petitioner claims that the impugned notice is without jurisdiction. However, this contention is not made good by the petitioner. The entire case of the petitioner is that it is not in arrears of any license fee, if the provisions of the License Agreement are construed correctly. This means that the entire dispute is really whether upon proper construction of the contents of the License Agreement, the respondents are entitled to increase the license fees and claim the same as arrears. Such a dispute, is a routine dispute, which arises in matters under the Public Premises Act.

At this stage, it would not be appropriate for this Court, to go into this dispute and determine whether the respondent-Corporation was right in demanding increased license fees, in terms of the Agreement between the parties.

10. We have perused the clauses 15 and 16 of the License Agreement and at this stage, all that we can say that it will be open for the petitioner to contend before the Estate Officer that having regard to the provisions of the said clauses, the respondent – Corporation is not justified in increasing the license fees and thereafter initiating the eviction proceedings on the basis that the petitioners are in arrears. Equally, it will be open to the respondent – Corporation to satisfy the Estate officer that such increase is in terms the licence Agreement between the parties. Accordingly, such disputes do not raise any jurisdictional issues so as to hold notice itself is ex-facie, ultra vires or without jurisdiction.

11. The decision in **Kaikhosrou (Chick) Kavasji Framji**(supra) upon which the reliance was placed by the petitioners is entirely in different context or in fact, which bear

no parallel whatsoever to the facts and circumstances of the present case. There was serious dispute as to the title and it is in this context, the Hon'ble Apex Court, held that such serious disputes of title ought not to be gone into such proceedings under the Public Premises Act.

12. In the present case there is no dispute that the Corporation owns the suit premises of which, the petitioner is said to be a licensee. There is also no serious dispute that the premises in question are themselves a public premises. The dispute only is whether the petitioners are liable to be evicted for having failed to pay the arrears of increased license fees. This is certainly a dispute, which the Estate Officer can go into and decide one way or the other. In case this issue decided against the petitioner, the Public Premises Act also confers the petitioner, a right to appeal against such decision.

13. For all these reasons we are not inclined to entertain this petition. However, we make it clear that all the petitioner's contentions, including the contention that the such summary proceedings ought not to have been initiated

against the petitioners are kept expressly open. This means that the petitioner, will be at liberty to raise all such contentions before the Estate Officer and we are sure that the Estate Officer, will decide all such contentions accordance with law. We clarify that all the contentions including the contention that some particular Estate Officer ought not to take up this proceedings are also kept open.

14. The observations if any in this order are for the limited purpose of deciding whether we should entertain this petition. Therefore these observations, need not influence the Estate Officer while deciding the matter on merits.

15. We also clarify that the suit, as filed by the petitioners may also be decided in accordance of law and at least in this petition, we are making no observations as to maintainability or otherwise of such suit.

16. We dispose of this petition in the aforesaid terms. There shall be no order as to costs.

17. All concerned to act on the basis of the authenticated copy of this order.

SMT. M.S. JAWALKAR, J.

M.S. SONAK, J.

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