

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1622 OF 2015

Shri Murlidhar Karbai Sonawane.] ... Petitioner

Versus

Union of India,
Through the General Manager (L & B), BSNL]
and Ors.] ... Respondent

Ms. Manda D. Loke for Petitioner.

Ms. Martina Sapkal & Mr. Abhishek Shukla i/b Arun Sapkal & Co. for
Respondent Nos.1 to 3.

Mrs. Bhoir for Respondent No.4-BMC.

Shri Murlidhar Karbai Sonawane, Petitioner, present in person.

CORAM :- M. S. SONAK, J.

DATE :- DECEMBER 05, 2015

P. C. :-

1. The challenge in this petition is to the Judgment and Order dated 06/01/2015 made by the City Civil Court, Mumbai, in Miscellaneous Appeal No.6 of 2014. By the impugned Judgment and Order, the City Civil Court has dismissed petitioner's appeal against order dated 28/02/2014 made by the respondent no.2 under Section 5(1) of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ('PP act') which had directed the petitioner to vacate the suit premises.

2. Ms. Manda D. Loke, learned Counsel for petitioner, raised the following submissions in support of this petition :-

- (a) That the BSNL, on whose behalf the eviction proceedings came to be initiated, had no rights to the suit premises post 1997. This is because the BSNL has already surrendered and transferred their rights in respect of the suit premises to the Brihanmumbai Municipal Corporation (BMC) which is the owner of the suit premises. As such, the very initiation of eviction proceedings under the PP Act was without jurisdiction.
- (b) In any case, the respondent no.2 i.e. Assistant General Manager, was not duly appointed as Estate Officer under the provisions of the PP Act and therefore, the respondent no.2 lacks jurisdiction to initiate the eviction proceedings and make the order dated 28/02/2014.
- (c) In any case, it was submitted that the opportunity of hearing or leading evidence was not offered by the Estate Officer. It was submitted that this is in breach of the provisions contained in Section 4 of the PP Act as also such denial constitutes violation of the principles of natural justice and fair play.

3. Ms. Loke also submitted that the petitioner has been independently pursuing the matter of regularization of his occupation with the BMC and pending such proceedings, the BSNL was not justified in evicting the petitioner.

4. Ms. Sapkal, learned Counsel for respondent nos.1 to 3, submitted that the suit premises had been allotted to the petitioner whilst in service of the BSNL. The petitioner has since retired with effect from 31/03/2012. The petitioner accordingly has no right to continue in the suit premises. Ms. Sapkal further submitted that in 1997, BSNL has merely offered to surrender tenancy if the BMC were ready to repair the building which house the suit premises. Ultimately, nothing further materialized and there was in effect neither any surrender nor any transfer. As a matter of abundant caution, even the offer for surrender/transfer was specifically revoked. Ms. Sapkal pointed out that even as on date, it is the BSNL who pays rent to BMC in respect of the building which house the suit premises. That apart, since the petitioner has obtained the suit premises from the BSNL, the petitioner cannot be permitted to question the right of BSNL to initiate eviction proceedings. Ms. Sapkal further submitted that by necessary notification published in the official gazette, the respondent no.2 came to be appointed as Estate Officer. Necessary show cause notice was issued to the petitioner pursuant to which the petitioner has filed his reply. If the petitioner did not avail liberty of leading evidence, it cannot be said that there was any denial of such liberty or that there is any breach of statutory provision or the principles of natural justice and fair play.

5. Mrs. Bhoir appeared for BMC i.e. respondent no.4. She submitted that the premises are held by the BSNL and therefore it is for the BSNL to take action in the matter.

6. Having heard the learned Counsel for parties, this is not a case to warrant interference in exercise of supervisory jurisdiction. Admittedly, the petitioner was allotted the suit premises whilst in service of BSNL by the BSNL as a service quarter. The petitioner has retired from service on 31/03/2012. Therefore, qua the BSNL, the petitioner has no right to continue in such service accommodation. The petitioner indeed answered the definition of 'unauthorised occupation' in terms of Section 2(g) of the PP Act.

7. Record indicates that on 17/10/1997, the BSNL had offered surrender/transfer of tenancy rights in the suit premises to the BMC subject to the BMC taking over the responsibility of repairs and other matters. However post such offer, nothing seems to have materialized. There is no record of the BMC accepting the offer or surrender/transfer of tenancy rights. There is no material on record that the BMC effected any repair to the suit premises. Subsequently, there is record that the BSNL, as a matter of abundant caution, even withdrew the offer and cancelled the NOC dated 17/10/1997. From this, it is quite clear that the BSNL continued to have rights and interest in the suit premises. In any case, the Appeal Court has rightly invoked the provisions of the Evidence Act and held that at least qua the petitioner, who had obtained allotment from the BSNL, it is the BSNL which had right to initiate eviction proceedings. In this view of the matter, it is not possible to accept the petitioner's first contention that the BSNL had no right to initiate any eviction proceedings against the petitioner.

8. Insofar as the authority of respondent no.2 to initiate eviction proceedings is concerned, there is a statement in the returns filed by the BSNL that the respondent no.2 was indeed duly appointed as the Estate Officer in respect of the suit premises. That apart, gazette publication dated 07/09/2009 has been produced on record which makes it clear that Assistant General Manager in-charge of land and buildings, had been appointed as Estate Officer in terms of Section 3 of the PP Act. Accordingly, even the second contention of the petitioner cannot be accepted.

9. Finally, the record does not indicate that there has been any breach of statutory provision or violation of principles of natural justice and fair play. The petitioner was issued a show cause notice in pursuance of which the petitioner has filed his reply. That apart, there is record which indicates that the petitioner, from time to time, applied for extension of time to vacate the suit premises on the ground that he was unable to make alternate arrangement for his residence. The contents of such application make it quite clear that the petitioner was allotted the suit premises in the servant quarters, as and by way of service accommodation. Upon retirement of the petitioner, the petitioner cannot claim to continue in such premises. Such continuance cannot have any sanction of the law.

10. For all the aforesaid reasons, this petition is required to be dismissed and is hereby dismissed.

11. At this stage, Ms. Loke, on basis of instructions from the petitioner who is present in the Court, seeks some time for the petitioner to vacate the suit premises. She states that the petitioner is willing to furnish an undertaking to this Court that he will, on his own, vacate the suit premises within a period of four months from today. Subject therefore, to the petitioner filing the usual undertaking in this Court within a period of two weeks from today, the respondent-BSNL shall not execute the eviction order up to 05/04/2016. The undertaking shall be filed not only by the petitioner but also every adult family member of the petitioner. The undertaking should give the precise number and details of the family members residing with the petitioner. The undertaking should also state that the petitioner and his family members are presently residing in the suit premises and that they shall not part with premises or create any third party rights therein. The undertaking should also state that the petitioner and his family members will hand over the vacant and peaceful possession of the suit premises to the respondent nos.1 and 2 on or before 05/04/2016 and that no further extension will be applied for. In case, however, no such undertaking is filed within a period of two weeks from today and copy of the same furnished to the learned Counsel for respondent nos.1 and 2 before the same is filed in the Registry, this restraint upon eviction shall not operate.

(M. S. SONAK, J.)