

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2455 OF 2014

Maratee Temple Trust through  
Manager K. Arunkumar .. Petitioner  
-Versus-  
The Estate Officer, Head Quarter  
Sub-Area, & Anr. .. Respondents

Mr.R.A.Thorat, Senior Advocate with R.M.Haridas for petitioner  
Dr.G.R.Sharma with D.P.Singh for respondents.

CORAM : M.S.SONAK, J.

DATE : 4<sup>th</sup> February 2015.

P.C.

1] This petition takes exception to the observations recorded by the Estate Officer in the minutes of the personal hearing held on 28<sup>th</sup> December 2013 to the following effect:-

“8. In view of all the evidence produced before me it is apparent that land cadastral survey No.2/4 belongs to the defence and the structure used by Shri K. Arun Kumar in the temple premises is an unauthorised construction on the Public Premises and he is an illegal occupant of the same. Shri K Arun Kumar could approach the Revenue Department for further clarifications, if required, pertaining to his contention that he is an authorised occupant of the said

land. Copies of documents as requested by Shri K. Arun Kumar to be provided to him. I further direct both the parties be summoned for another hearing on a suitable date.”

2] Mr.Thorat, learned Senior Counsel appearing for the petitioner submitted that the premises in question do not answer the definition of “Public Premises” under section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short the said Act). This is because, in the property card issued by the Revenue Department, the said premises have been listed in the name of the petitioner. Mr.Thorat further pointed out that this position has not even been disputed by the respondents, which is evident from the averments in para 27 of the affidavit filed by Colonel Pradeep Kumar Singh which reads as under:-

“27. With reference to para 10(g) of the petition, the contents thereof are denied being baseless, false and frivolous. I say that the property cannot be listed as freehold. The property card issued by the Revenue Department is erroneous. I say that case for its amendment has been forwarded by the Defence Estate Officer, Mumbai vide its letter No.BOM/4228/MEO/IV/14 dated 19<sup>th</sup> July 2012.”

3] In view of the aforesaid, Mr.Thorat submitted that the

proceedings under the said act are clearly without jurisdiction and that this court ought to issue a writ of prohibition restraining the Estate Officer from proceeding further in the matter.

4] At the outset, the issue as to whether entries in property card are determinative of title to the property, shall have to be gone into by the Estate Officer. Further, para 27 of the affidavit quoted above itself asserts that entries in the property card are erroneous and that the necessary steps have already been initiated to seek amendments thereof. In such circumstances, it cannot be said, at least at this stage, that the proceedings under the said Act are ex facie without jurisdiction, so as to warrant the issuance of writ of prohibition.

5] In the present case the issue as to whether or not premises in question answer the definition of Public Premises under section 2(e) of the said Act, is a mixed issue of law and fact. Accordingly, it will be appropriate that the Estate Officer decides such issue one way or the other on the basis of material on record and in accordance with law.

6] As against, any final decision of the Estate Officer, both on the issue of jurisdiction as well as consequent eviction or otherwise, the said Act provides for remedy of appeal under section 9 of the said Act. This is an additional reason as to why this Court is disinclined to exercise its extra ordinary jurisdiction at this stage.

7] Accordingly, the present petition is not entertained. However, it is clarified that this court has not examined the merits or de-merits of the respective case of the parties and all issues in this regard have been specifically kept open.

8] This petition is dismissed. There shall be no order as to costs. Interim relief granted earlier stands vacated.

( M.S.SONAK, J.)