

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11305 OF 2015

Saregama India Ltd. ... Petitioner
vs.
Life Insurance Corporation of India & Anr. ... Respondents

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Mr. Harish Pandya, Ms. Aastha Arora i/b. Khaitan & Co. for the petitioner.

Ms. Prisa'lla Sameul i/b. Raymond Samel for the respondents.

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CORAM : M.S. SONAK, J.
DATE : 18th NOVEMBER, 2015.

P.C.:

1. Rule. By consent of the learned counsel appearing for the respondent rule is made returnable forthwith.
2. This petition challenges the order dated 03/11/2013, by which, the Estate Officer has ruled that proceedings under the Public Premises (Eviction of Unauthorised Occupants Act 1971) (Said Act) are competent against the petitioner, in respect of the premises let out to the petitioner.
3. Mr. Harish Pandya, the learned counsel for the petitioner has submitted that the petitioner is a pre 1958 tenant and therefore, in terms of the Judgment of the Hon'ble Apex Court in the case of *Dr. Suhas H. Pophale Vs. Oriental Insurance Co. Ltd. Reported in (2014) 4 SCC 657*, the petitioner cannot be regarded as an unauthorised occupant

within the meaning assigned to this expression under the said Act. On this ground, Mr. Pandya, submits that proceedings under the said Act are without jurisdiction and the Estate Officer, in holding otherwise has clearly exceeded his jurisdiction. Mr. Pandya, has further submitted that the view taken by the Estate officer in observing that the decision of the Hon'ble Apex Court in the case of *Dr. Suhas Pophale (Supra)* does not lay down correct law is clearly subversive judicial discipline. Mr. Pandya has placed reliance upon the decision of this Court in the case of *M/s. Cafe Hornby & Excel Stores Vs. the Life Insurance Corporatin of India 2015 SCC OnLine Bom 4907*, wherein, an almost identical order made by the Estate Officer were set aside by this Court, by observing that the Estate Officer in making such observations transgressed the limits of judicial propriety and discipline.

4. Ms. Samuel, learned counsel for the respondent attempted to defend the impugn order by pointing out that the petitioners had entered into some arrangement with the respondent no.1 some time in the year 2001 and thereafter, failed to honour the said arrangements. The learned counsel further pointed out that there is no necessity to entertain the present petition, because even against final order that will be made by the Estate Officer, there is remedy by way of appeal provided under the said act itself.

5. Having heard learned counsel for the parties it is clear that the Estate Officer has clearly exceeded his jurisdiction by making comments upon the decision of Hon'ble Apex Court in the case of *Dr. Suhas H. Pophale (supra)*. By reference to certain hypothetical situations, the Estate Officer has virtually suggested that the decision of the apex court in the case of *Dr. Suhas H. Pophale (Supra)* does not lay down the correct law. The Estate Officer has gone to the extent of holding that ruling of the Apex court to the extent said ruling holds that the said Act cannot be applied retrospectively, is "erroneous". As has been already observed by this court in the case of *M/s. Cafe Hornby & Excel Stores (supra)*, the estate Officer in making such observations and comments can be said to have transgressed the limits of judicial propriety and discipline. On this short ground the impugned order made by the Estate Officer is required to be set aside and same is hereby set aside.

6. The Estate Officer has however not addressed himself to the crucial issue as to whether the petition is indeed a pre 1958 tenant in respect of the suit premises or not. The proceedings are pending since the year 2013. In such circumstance, the interest of justice would be met if the jurisdictional issue is specifically kept open for being agitated along with all the other issues which arise in the proceedings. The estate officer is accordingly directed to dispose of the proceedings as

expeditiously as possible and in any case within a period of eight months from today. The Estate Officer shall take into consideration and decide all the issues which arise in the matter including and particularly the jurisdictional issues raised by the petitioner. In so far as the proceedings under the said act are concerned it may not be appropriate, that issues are decided in piece meal particularly where the issues raised may be mixed question of law and fact. In fact, this was the precise approach adopted by this court in the case of *M/s. Cafe Hornby & Excel Stores (supra)*. In the said decision, the issue of jurisdiction was kept open and was directed to be considered in the said order. In this case however the estate officer is directed to consider the issue of jurisdiction once again, but along with all the other issues which arise in the proceedings.

7. Rule is accordingly made absolute to the aforesaid extent. It is clarified all contentions of all parties are left open. There shall be no order as to costs.

8. After this order was pronounced the learned counsel for the petitioner points out that the Estate Officer by order dated 16/03/2015 has denied the petitioner an opportunity to cross examine the witness on behalf of respondent no.1. Although there is no formal challenge to this order since such has been passed during the pendency of this petition it is appropriate that this court interferes with the same in exercise of

supervisory jurisdiction under Article 227 of the Constitution of India. The said order came to be passed because petitioners had refused to proceed with the cross examination on the ground of pendency of the present petition, even though this court had not stayed further proceedings before the Estate Officer. The petitioners were not at all right in refusing to proceed with the cross examination merely on the ground of pendency of the present petition. However, now that directions have been issued for disposal of the proceedings by the Estate Officer within a period of eight months from today, deprivation of opportunity of cross examination, appears to be too harsh. Therefore, subject to payment of cost of Rs. 10,000/- within a period of one week from today the order dated 16/03/2015 whereby the petitioner has been deprived opportunity of cross examination is hereby set aside.

9. The learned counsel for respondent no.1 has left to this court to decide whether the costs could be made payable to the Kirtikar Law Library in this Court. Accordingly, the petitioner to pay the costs to Kirtikar Law Library and thereafter produce the necessary receipt before the Estate Officer. All parties to co-operate in the matter for expeditious disposal of the proceedings before the Estate Officer.

(M.S. SONAK, J.)