

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6075 OF 2014

Life Insurance Corporation of India	..	Petitioner
vs.		
Smt. Alexander Pothan	..	Respondent

WITH

WRIT PETITION NO. 6076 OF 2014

Life Insurance Corporation of India	..	Petitioner
vs.		
Kamlesh Vasude Shringi	..	Respondent

WITH

WRIT PETITION NO. 6077 OF 2014

Life Insurance Corporation of India	..	Petitioner
vs.		
Chandra Satramdas Chandiramani	..	Respondent

WITH

WRIT PETITION NO. 6068 OF 2014

Life Insurance Corporation of India	..	Petitioner
vs.		
Ghanshyam Pitumal Punjabi	..	Respondent

Mr. Akshay Shah for the Petitioner in all Petitions.
Mr. Amarendra Mishra for the Respondents in all Petitions.

CORAM : M. S. SONAK, J.

Date of Reserving the Judgment : 01 September 2015.

Date of Pronouncing the Judgment : 07 September 2015.

JUDGMENT :-

1] The learned counsel for the parties agree that these petition can be disposed of by common order.

2] In all these petitions, the challenge is to the separate orders dated 27 February 2014, by which, the Small Causes Court at

Mumbai (Trial Court) has declined to frame a preliminary issue on the point of jurisdiction of the Trial Court to try and entertain the suit. The contents and reasoning of the impugned orders dated 27 February 2014 in Writ Petition Nos.6075, 6076 and 6077 of 2014 are identical. The impugned order dated in Writ Petition No. 6068 of 2014, however, makes reference to an additional circumstance, namely the claim of lease with effect from 30 April 1957, prior to the date of vesting of the suit premises in favour of the petitioner-LIC. Accordingly, these petitions can be disposed of with a common order.

3] The petitioner-LIC is the defendant and the respondents in each of the petitions are the plaintiffs, who have instituted suits in the Trial Court, *inter alia*, seeking following reliefs:

- a] For declaration that the plaintiffs are tenants of LIC in respect of the suit premises;
- b] For direction to the issue rent receipt;
- c] For declaration the notice dated 1 July 2013, calling upon the plaintiffs to vacate suit premises upon the plaintiffs refusal to execute draft Lease Deed, is illegal and no binding on the plaintiffs; and

d] For an injunction restraining dispossession from the suit premises, without following due process of law.

4] The respondent in Writ Petition No. 6068 of 2014 has pleaded that he is the tenant in respect of suit premises from 30 April 1957, i.e., prior to 16 September 1958 which is the date of vesting of the suit premises in LIC. The respondents in rest of the petitions, however, have claimed the tenancy from various dates post 16 September 1958.

5] The LIC took out an application under Section 9-A of the Civil Procedure Code, 1908 (CPC), urging the framing of preliminary issue on the point of jurisdiction. Reliance was placed upon the definition of '*public premises*' under Section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (PPA) and Section 15 of the PPA, which bars jurisdiction of the Civil Court in so far as public premises are concerned. By the impugned orders dated 27 February 2014, the Trial Court, mainly relying upon the decision of the Hon'ble Apex Court in case of *Banatwala & Co Vs. LIC*¹, and some other decisions, declined to frame the preliminary issue on the point of jurisdiction under Section 9-A of the CPC.

1 2011(13) SCC 446

6] Mr. Akshay Shah, learned counsel for the petitioner-LIC, quite ably, submitted that since the suit premises quite answered the definition of '*public premises*' under Section 2(e) of the PPA, suit, in respect of such public premises, was clearly barred under Section 15 of the PPA. Mr. Shah submitted that the PPA is a '*special law*' qua the Maharashtra Rent Control Act, 1999 (Rent Act), which is a '*general law*' , in respect of the suit premises. Besides, Section 15 of the PPA creates a specific bar of jurisdiction to entertain the suits or proceedings in respect of eviction of any person in unauthorised occupation of public premises. Therefore, the jurisdiction of the Trial Court was clearly barred and in terms of the impugned orders, the Trial Court seeks to usurp jurisdiction, when in fact, none is vested in it.

7] On the other hand, Mr. Amarendra Mishra, learned counsel for the respondents, defended the impugned orders by submitting that this issue stands concluded by the decision of the Hon'ble Apex Court in case of *Banatwala & Co. (supra)*, as also the decisions of this Court in case of *United India Insurance Co. Ltd. V/s. Vulcan Association and ors.*² , and the decision of Delhi High Court in case of *DCM Limited v/s. Delhi Development Authority*³. Mr. Mishra

2 2012 (1) Mh.L.J. 687

3 2013 AIR CC 1883 (DEL)

submitted that in so far as the respondent in Writ Petition No. 6068 of 2014, in terms of decision of the Hon'ble Apex Court in case of *Suhas H. Pophale Vs. Oriental Insurance Company Limited and its Estate Officer*⁴, provisions of PPA were not even applicable to the said respondent or the suit premises held by him. For all these reasons, Mr. Mishra submitted that there is no warrant to interfere with the impugned orders.

8] The rival contentions now fall for determination.

9] The impugned orders have basically declined to frame a preliminary issue under Section 9-A of the CPC on the point of jurisdiction. Even in cases where preliminary issue is framed under Section 9-A of the CPC, but ultimately rejected by the Trial Court, holding that it has jurisdiction to try and entertain the suit, this Court in case of *Walchandnagar Industries Ltd., Mumbai vs. Indraprastha Developers, Pune and others*⁵, has held that the jurisdiction under Section 115 of the CPC, should normally not be exercised. The discussion in this regard is contained in paragraphs 75, 76 and 77 has observed thus:

4 (2014)4 SCC 657

5 2015(3) Mh.L.J. 786

“Preliminary judgment rejecting objection regarding the jurisdiction of Court under Section 9-A of Civil Procedure Code

75. The parameters for exercise of jurisdiction under section 115 of Civil Procedure Code laid down in the aforesaid para in respect of Order VII, Rule 11(d) and Order XIV, Rule 2 of Civil Procedure Code cannot be applied in every situation to the cases where the Court decides the preliminary issues in exercise of its jurisdiction under Section 9-A of Civil Procedure Code, which permits the Court to decide a pure question of law and also a mixed question of law and fact, touching the jurisdiction of the Court. When the Court passes an order in exercise of its jurisdiction under Section 9-A on the principle of demurrer, then in that event the High Court should exercise its jurisdiction under Section 115 of Civil Procedure Code, for the reasons stated in the earlier para. However, when a decision relating to the question of jurisdiction of the Court based upon the conspectus of facts, the Court will have to decide in the facts and circumstances of each case whether such an interference is called for.

76. Under Section 9-A of Civil Procedure Code, the Court is empowered to frame an issue as to the jurisdiction of the Court and to permit the parties to lead evidence in support of it, if it is a mixed question of law and fact. When a decision relating to the jurisdiction of the Court is based upon conspectus of facts, then a question of appreciation or re-appreciation of the evidence on record, may arise. For example, the cases of bar of limitation, bar of res judicata, bar under Order II, Rule 2 of Civil Procedure Code, and the matters of like nature, where the parties lead oral and documentary evidence, and on conspectus of facts, the decision is arrived at by the Trial Court either that the suit is barred by law of limitation, or by a principle of res judicata or by a principle under Order II, Rule 2 of Civil Procedure Code. No doubt, these issues pertain to the jurisdiction of the Court in respect of which the power under Section 115 can be exercised.

77. The question is, should this Court in aforesaid situation exercise its jurisdiction under Section 115 of Civil Procedure Code. The High Court may not exercise its

jurisdiction in such situation. The reasons would be – (i) the trial Court does not act beyond the jurisdiction, neither it fails to exercise the jurisdiction vested in it; (ii) the trial Court is bound to decide the right, may decide wrong, and merely because it has decided wrongly, it does not amount to doing something which it had no jurisdiction to do; (iii) it is not the function of the High Court under section 115 to appreciate or re-appreciate the evidence on record and to come to a conclusion different than the one arrived at by the Court below; (iv) the High Court cannot act as a Court of Appeal and substitute the view on facts taken by the trial Court; (v) section 115 does not confer a jurisdiction upon the High Court to correct the errors of fact, howsoever gross they may be, or even the errors of law, not touching the jurisdiction of the Court; (vi) the exercise of jurisdiction by the High Court shall deprive a statutory right of appeal available to the party to challenge the findings of fact recorded by the Court below to answer a preliminary issue either in the negative, (vii) the error, if any, can be corrected in more convenient and effective manner in wider jurisdiction of appeal; (viii) it is possible that if the suit is dismissed on merits, the decision on preliminary issue may lose its significance; and (ix) if any appeal is preferred against dismissal of suit, then in terms of sub-section (1) of section 105 read with Order XLIII, Rule 1-A or under Order XLI, Rules 22 and 33 of CPC, it can be urged in such appeal by the defendant that the Trial Court could not have passed such an order and the Appellate Court is bound to decide the same on its own merits.

10] In this case, the petitioner-LIC has invoked the jurisdiction under Article 227 of the Constitution of India. In terms of the decision of this Court in case of *Walchandnagar Industries Ltd.* (*supra*), this may not be correct, where objection under Section 9-A of the CPC is rejected by the Trial Court. In such a situation, it is possible to invoke revisional jurisdiction under Section 115 of the

CPC. The jurisdiction under Article 227 of the Constitution of India is invoked by the petitioner-LIC, possibly because in this case, the Trial Court has declined to even frame the preliminary issue under Section 9-A of the CPC. As such, there is no reason to non-suit the petitioner on the ground of availability of alternate remedy. However, the observations in paragraphs '75', '76' and '77' will equally apply in the context of interference with the impugned orders in the exercise of jurisdiction under Article 227 of the Constitution of India. Accordingly, for the reasons set out in paragraph '77' of *Walchandnagar Industries Ltd. (supra)*, there is no reason to interfere with the impugned orders, at this stage. If, ultimately, the suits are decided against the petitioner-LIC and the LIC chooses to institute a substantive appeal against such decision, then in terms of sub-section (1) of Section 105 read with Order 43, Rule 1-A or under Order 41, Rules 22 and 23 of the CPC, it can always be urged in such appeal by the LIC that the Trial Court could not have passed such an order and the Appellate Court is bound to decide the same on its own merits.

11] In view of the aforesaid, there is really no necessity to advert to the merits or de-merits of the view taken by the Trial Court in making impugned orders. However, at least *prima-facie*, there is

merit in the contention of Mr. Mishra that the provisions of PPA may not apply in respect of suit premises, where tenancy is created prior to 16 September 1958, i.e., the date of vesting of suit premises in the LIC. The Hon'ble Apex Court in case of *Suhas Pophale (supra)*, at paragraph '64' has observed thus :

64. *As far as the eviction of unauthorised occupants from public premises is concerned, undoubtedly it is covered under the Public Premises Act, but it is so covered from 16.9.1958, or from the later date when the premises concerned become public premises by virtue of the premises concerned vesting into a Government company or a corporation like LIC or the nationalised banks or the general insurance companies like respondent no.1. Thus there are two categories of occupants of these public corporations who get excluded from the coverage of the Act itself. Firstly, those who are in occupation since prior to 16.9.1958, i.e. prior to the Act becoming applicable, are clearly outside the coverage of the Act. Secondly, those who come in occupation, thereafter, but prior to the date of the premises concerned belonging to a government corporation or a company, and are covered under a protective provision of the State Rent Act, like the appellant herein, also get excluded. Until such date, the Bombay Rent Act and its successor Maharashtra Rent Control Act will continue to govern the relationship between the occupants of such premises on the one hand, and such government companies and corporations on the other. Hence, with respect to such occupants it will not be open to such companies or corporations to issue notices, and to proceed against such occupants under the Public Premises Act, and such proceedings will be void and illegal. Similarly, it will be open for such occupants of these premises to seek declaration of their status, and other rights such as transmission of the tenancy to the legal heirs, etc. under the Bombay Rent Act or its successor Maharashtra Rent Control Act, and also to seek protective reliefs in the nature of injunctions against unjustified actions or orders of eviction if so passed, by*

approaching the forum provided under the State Act which alone will have the jurisdiction to entertain such proceedings.

12] Similarly, at least *prima-facie*, the view taken by the Trial Court that its jurisdiction is not ousted in all circumstances relating to public premises, cannot itself be said to be in patent excess of jurisdiction, so as to warrant interference under Article 227 of the Constitution of India.

13] In case of *Banatwala & Co. (supra)*, the Apex Court, noted in paragraph '25' that as per the preamble, the Rent Act relates to five subjects , namely (i) control of rent, (ii) repairs of certain premises, (iii) eviction, (iv) encouraging the construction of new houses by assuring fair return of investment by the landlord, and (v) matters connected with the purposes mentioned above. In the said case, the Hon'ble Apex Court was concerned with the issue of fixation of standard rent and restoration and maintenance of essential supplies and services by the landlord. It was held that these two subjects were not covered under the PPA, but rather they were covered under the Rent Act Accordingly, it was held that the Small Causes Court retained jurisdiction to entertain the suit, notwithstanding a circumstance that the suit premises may have answered the definition of '*public premises*' under the PPA.

14] In case of *United India Insurance Co. Ltd. (supra)*, the learned Single Judge of this Court has taken a view that the suit seeking perpetual injunction instituted by the plaintiff/tenants of various open parking spaces in the building owned by the defendant, even though, the premises /open spaces may be public premises, was not barred, particularly as no remedy was available under the PPA to seek injunction.

15] Thus, based upon *Banatwala & Co. (supra)* and *United India Insurance Co. Ltd. (supra)*, the Trial Court has taken view that even in respect of public premises, with regard to reliefs that cannot be obtained under the PPA and in respect of which, exclusive jurisdiction is vested in the Small Causes Court in terms of the Rent Act, such Small Causes Court would retain jurisdiction to entertain and try the suit. In the present cases, the LIC has not, at least as yet, issued any notices under PPA or commenced any proceedings under PPA. Accordingly, such view cannot be regarded as being in patent excess of jurisdiction, at least, at the present stage, so as to warrant interference under Article 227 of the Constitution of India.

16] For the aforesaid reasons, these petitions are dismissed. However, it is made clear that the observations in the impugned

orders as also the present judgment and order are only *prima-facie*, and finally, if the suits are decided against the petitioner-LIC and the petitioner-LIC chooses to institute substantive appeals against the decrees, the petitioner-LIC shall be entitled to urge in such appeal that the Trial Court should have not exercised jurisdiction in the matter and the Appeal Court will then decide such issue on its own merits and in accordance with law.

17] With liberty as aforesaid, these petitions are dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)

18] At this stage, the learned Counsel for Petitioner prays for continuation of the order made on 24 September 2014 for a further period of 8 weeks from today. By the said interim order, the Trial Court was required to refrain from taking up for consideration the respondents' application seeking interim relief. At the same time, it was made clear that such order was made as a status-quo of order already operating in favour of the respondents. In these circumstances, the interim order is continued for a period of 8 weeks subject, of course, to the petitioner maintaining status-quo in respect of the suit premises.

(M.S. SONAK, J.)

CERTIFICATE

“I certify that this Judgment uploaded is a true
and correct copy of original signed Judgment.”