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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12540 OF 2015

Mr.Assan T.Bhatia ... Petitioners

Vs.

1. The State of Maharashtra
2. Life Insurance Corporation of India ... Respondents

Mr.Amarendra Mishra, Advocate for Petitioners.

CORAM : R.G.KETKAR, J.

DATE : 17th DECEMBER, 2015

P.C. :

. Not on board. At the request of Mr. Mishra taken up for admission.

2. Heard Mr.Amarendra Mishra, learned Counsel for the petitioners.

3. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as opponent No.2, have challenged the order dated 03/01/2015 passed by the Estate Officer of Life Insurance Corporation of India. By that order, the Estate Officer rejected the application made by the opponent No.2 under Section 9-A of Code of Civil Procedure, 1908 (for short 'C.P.C.') for dismissing the case initiated by respondent No.2 herein under the provisions of the Public Premises (Eviction of Unauthorised

Occupants) Act, 1971 (for short 'Act').

4. Mr. Mishra submitted that opponent No.2 has filed application under Section 9A on 08/12/2014 inter alia contending that the tenancy in question i.e. T.C.No. 2318 was issued in favour of father of opponent No.1. The proceedings were initiated by respondent No.2, hereinafter referred to as LIC against one Thawerdas Chandiramani Bhatia. He died leaving behind opponent No. 1 – Mr. Kishin Thawerdas Chandiramani Bhatia and opponent No.2. The said premises were owned and constructed by M/s. Asian Insurance Company and family of Thawerdas is in possession of the suit premises since 1955 initially as tenant of M/s. Asian Insurance Company. In the year 1956, LIC purchased the premises in question and adjoining area. In view of decision of the Apex Court in the case of *Suhas H.Pophale Vs. Oriental Insurance Co. Ltd.*, (2014) 4, SCC 657, the Act is not applicable to the suit premises. Hence, proceedings initiated under the Act are per-se illegal and without any jurisdiction, the proceedings initiated by LIC under the Act are liable to be dropped.

5. By the impugned order, the Estate Officer rejected the application. Perusal of the reply filed by the LIC and in particular, paragraphs 4 to 6 shows that LIC has not admitted case made out by opponent No.2 as also applicability of the decision of the Apex Court in the case **Suhas Pophale** (*supra*). While rejecting the application,

the Estate Officer has observed in paragraph 3 thus :

“Neither Applicants have admitted nor it is established through substantial evidence by Opponents that the deceased Recorded Tenant Shri Thavardas M.Bhatia was occupying the scheduled premises prior to the coming into force of the P. PAct on 16/09/1958. The same will therefore have to be proved by leading evidence.”

6. Perusal of above extracted portion shows that the Estate Officer held that the contentions raised by opponent No.2 will have to be proved by leading evidence. In view thereof, I do not find that the Estate Officer has committed any error in rejecting the application under Section 9-A of C.P.C. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Hence, Petition fails and the same is dismissed.

(R.G.KETKAR, J.)