

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5542 OF 2015

Drishti Adventure Sports Private Limited : Petitioner
versus
The Estate Officer and ors. : Respondents.

Mr. Farhan Dubhash a/w Mr. Dev Upadhyay i/by Ramesh Makhija & Co.
for the Petitioner.

Ms. Kavita Anchan i/by M V Kini & Co. for the Respondent Nos.1 and 2.

CORAM : R. M. SAVANT, J.

DATE : 24th June 2015

P.C.

1 The Petitioner has been subjected to the proceedings under the Public Premises Eviction Act, 1971 which proceedings are presently in progress before the Estate Officer.

2 The Petitioner by way of the above Petition has sought reliefs vide prayer clauses (A) and (B). In so far as the relief sought vide prayer clause (A) is concerned, the learned counsel appearing for the Petitioner Shri Farhan Dubhash states that after the filing of the above Writ Petition, the Estate Officer has passed necessary orders and hence the grievance in respect of some of the orders mentioned in prayer clause (A) does not survive. The learned counsel for the Petitioner further states that in respect of the remaining orders, the same would be challenged by the Petitioner at the appropriate time if need be.

3 In so far as the relief claimed vide prayer clause (B) is concerned, the Petitioner has sought framing of the issue of jurisdiction as raised by it in its Written Statement-cum-Reply to the Application filed by the Respondent No.2, and also seeks the relief of the framing of Additional Issues as raised by it vide its Application dated 11/6/2015. Hence the sum and substance of the reliefs sought vide prayer clause (B) is the framing of a preliminary issue. In the said context it is required to be noted that in Paragraphs F, G, H and I of the Written Statement-cum-Reply, the Petitioner has questioned the applicability of the Public Premises Eviction Act. It seems that the same has been reiterated in the Additional Written Statement-cum-Reply filed by the Petitioner. It seems that the Petitioner had filed an Application for framing of a preliminary issue by invoking provisions of Section 9A of the Code of Civil Procedure. The said Application it seems was rejected by the Estate Officer as according to him no such proceeding is contemplated whilst trying the proceedings under the Public Premises Eviction Act. The Petitioner thereafter filed an Application on 11/6/2015 for framing of two issues which are to the following effect :-

- [i] Whether Respondent No.,1 proves that the Show Cause Notices are bad in law ?
- [ii] Whether Respondent No.1 proves that Estate Officer lacks jurisdiction to pass any orders in the matter?

The said Application has been rejected by the Estate Officer by recording so in

the Roznama of the proceedings dated 11/6/2015. It is in view of the said rejection that the Petitioner has approached this Court.

4 In the light of the fact that the Petitioner has made a specific averment questioning the applicability of the Public Premises Eviction Act to the premises in question it was incumbent upon the Estate Officer to frame the issue of jurisdiction as the same would go to the root of the matter and would also impinge upon the exercise of jurisdiction by him. The Estate Officer having not done so, and having rejected it by recording so in the roznama dated 11/6/2015, the above Petition would have to be allowed to the said extent. However, instead of the issues as formulated and appearing in the Application dated 11/6/2015, in my view, the following issues would serve the purpose :-

- [1] Whether the Public Premises Eviction Act is applicable to the premises in question ?
- [2] Consequently whether the show cause notice issued to the Petitioner is legal and valid.

The Estate Officer is accordingly directed to frame the aforesaid issues and try them along with other issues which are framed in the proceedings. With the aforesaid directions the above Writ Petition is disposed of.

[R.M.SAVANT, J]