

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO. 6744 OF 2015

Bharat Petroleum Corporation Ltd. .. Petitioner
Versus
The Estate Officer,
The New India Assurance Co. Ltd. & Anr. .. Respondents
...
Mr. S. J. Chaurasia i/b. Ashoka Law Firm for Petitioner.
Mr. V. Y. Sanglikar for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE : SEPTEMBER 14, 2015.

P.C.:

This petition challenges the order dated 25th June 2015, by which, the Estate Officer under the Public Premises (Eviction of Unauthorized Occupant) Act, 1971 (said Act) as declined to frame a preliminary issue on the point of jurisdiction.

2] There is no arbitrariness or error of jurisdiction involved in the making of the impugned judgment. The issue of jurisdiction, in the present case, is a mixed question of law and fact. If therefore, the Estate Officer decided to consider such issue along with all other issues that arise in the proceeding, it cannot be said that there is failure to exercise jurisdiction.

3] The learned counsel for the petitioner points out that the Estate Officer, in paragraph No. 6 has made an observation that since the proceeding under the said Act are summary in nature, there is no

obligation to frame issues. Learned counsel for the petitioner expresses apprehension that on the basis of such observation, the issue of jurisdiction will not even be considered by the Estate Officer.

4] Such apprehension is quite misplaced. In any case, is clarified that the Estate Officer is duty bound to consider whether it has jurisdiction in the matter, whether or not, the proceedings under the said Act are summary in nature.

5] The learned counsel for the petitioner place reliance upon the decision of the Apex Court in the case of Cantonment Board & Anr V/s. Church of North India AIR 2011 SC 2339. In the said decision, the Hon'ble Apex Court has held that even where the jurisdiction is not raised in the earliest instance, since, such issue goes to the root of the matter, the same is required to be decided by the Estate Officer. Obviously in this case also, the Estate Officer shall have to decide the issue of jurisdiction. However, the decision of the Apex Court, is not an authority for the proposition that such issue has to be decided as a preliminary issue and the same cannot be decided along with all other issues, even though, the issue of jurisdiction may be a mixed question of law and facts.

6] This Court, in the case Walchandnagar Industries Ltd., Mumbai vs. Indraprastha Developers, Pune and others has held that

jurisdiction under Section 115 of the CPC should not normally be exercised were, the court declines to frame any preliminary issue under Section 9A of the CPC or having framed such issue holds it has jurisdiction to proceed further in the matter. In this case, the provisions of Section 9 (A) of CPC obviously are not invoked. Further, the present petition invokes the provisions in Article 227 of the Constitution of India. Nevertheless, the principle laid down by this Court will still apply. This Court in paragraph 77 has observed thus ;

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.

7] Accordingly, except for the clarification as aforesaid there is no reason to interfere with the impugned order. This petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment/Order.**