

Yeshwant Singh Nandlal Singh Vs. The Union of India and another	...	Petitioner Respondents
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CORAM : R. G. KETKAR, J.
DATE : DECEMBER 18, 2015

Heard Mr. Mali, learned Counsel for petitioner and Mr. Suresh Kumar, learned Counsel for respondent No.1 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the judgment and order dated 22.09.2015 passed by the learned Principal Judge, City Civil Court for Greater Mumbai in Miscellaneous Application No.95 of 2015 in Miscellaneous Appeal No.29 of 2015. By that order, the learned Principal Judge rejected the application made by the petitioner for amending the Appeal memo so as to incorporate paragraphs 17(a) to 17(n) and prayer clauses (c-1 to c-4).

3. Mr. Mali strenuously contended that the order of eviction was passed against the petitioner on 20.04.2015 by respondent No.2 herein. Aggrieved by that decision, petitioner preferred Appeal under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short 'Act'). During the pendency of the Appeal, though petitioner prayed for stay, it was refused. Respondent No.1 took forcible possession of the premises in dispute and caused damage to the extent of

Rs.20,00,000/- to the valuable articles and furniture and fixtures. Respondent No.1 also recovered rent @ Rs.41,811 from the petitioner and deducted an amount of Rs.10,03,464/- from his salary. The said amount is liable to be refunded along with interest. Petitioner took out application for amending the appeal giving details of the list of articles and valuables attached by the respondent No.1. He submitted that for deciding the controversy raised in the appeal, it is necessary to allow the amendment proposed by the petitioner. No prejudice will be caused to the respondent No.1. He, therefore, submitted that the impugned order deserves to be set aside.

4. On the other hand Mr. Suresh Kumar supported the impugned order. He submitted that admittedly, proceedings under the Act were initiated against the petitioner. Respondent No.2 passed order of eviction. Against that, petitioner preferred appeal under Section 9. The controversy in the present case is limited namely, whether the order of eviction was validly made by the respondent No.2. He submitted that petitioner is due to retire on 31.12.2015.

5. The learned Principal Judge, while rejecting the application, referred to provisions of Section 64 of the Indian Easements act, 1882 and held that as the stay to the order of eviction was not granted, respondent No.1 was entitled to execute the order of eviction. Accordingly, respondent No.1 executed order on 13.05.2015. The learned Principal Judge also referred to the decision of the Apex Court in the case of ***The Corporation of Calicut Vs. Sreenivasan***, AIR 2002 SC 2051. The Apex Court considered Section 64 of the Easements Act and observed that even if a licensee is evicted, though grounds for revocation of licence do not exist or forcefully evicted, his only remedy is to recover compensation from grantor and not to resume occupation.

The learned Principal Judge, therefore, held that the petitioner is not entitled to seek relief of recovery of possession of the premises in dispute. That apart, as noted earlier, the petitioner is due to retire on 31.12.2015. The learned Principal Judge, therefore, observed that if at all, petitioner desires to claim compensation / damages from respondent No.1, he would be at liberty to approach the appropriate legal forum. In the proceedings under Section 9 of the Act, the appellate Court cannot go into this aspect.

6. After considering the material on record and submissions advanced by the learned Counsel appearing for the parties, I do not find that the learned trial Judge has committed any error in passing the impugned order. The scope of Section 9 cannot be enlarged so as to include claim for compensation / damages. If at all, petitioner has any grievance in that regard, he is at liberty to approach appropriate legal forum. Subject to this, Petition is dismissed. It is made clear that the observations made herein are only for the purpose of considering the correctness of the impugned order, and in case, the petitioner adopts any appropriate proceedings, the same shall be decided on the basis of evidence on record and in accordance with law, without being influenced by the observations made herein. Order accordingly.

(R. G. KETKAR, J.)

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