

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11612 OF 2014

Rohit Rameshchandra Majmudar	..	Petitioner
VS.		
Dena Bank & Anr.	..	Respondents

Mr. V. Y. Sanglikar for Petitioner.
Mr. Rajesh Shethia for Respondent No. 1.

CORAM : M. S. SONAK, J.
DATE : 03 FEBRUARY, 2015

P.C. :-

1] Rule, with the consent of the learned counsel for the parties,
Rule is made returnable forthwith.

2] The respondent no. 2, Estate Officer, issued a notice to one Rhagwanji M. Desai in respect of premises being Room No. 14, 1st floor, Shree Sadan, Denawadi, Girgaon, Mumbai 400002 ("said premises"). This notice was issued under the provisions of Section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ("said Act").

3] It is the case of the petitioner that said notice was pasted on the said premises. In response thereof, the petitioner by application dated 14 November 2014 pointed out to the Estate Officer that Mr. Rhagwanji M. Desai has expired several decades ago. Further, the

petitioner is related to late Mr. Rhagwanji M. Desai and further has been in occupation of the said premises since the year 1971-72. Accordingly, the petitioner contended that the petitioner has acquired the status of tenant in respect of the said premises. The application merely requests the Estate Officer to note the presence of the petitioner.

4] Mr. Sanglikar, the learned counsel for the petitioner points out that it is the case of the petitioner that the notice which has been issued under Section 4 of the said Act against a dead person, is nothing but a nullity. Further, the petitioner, who is a statutory tenant in respect of the suit premises, which forms the subject matter of the notice under Section 4(1) of the said Act. Despite, this Estate Officer, has refused even to take on record the application dated 14 November 2014 or pass any orders thereon.

5] Considering the facts and circumstances as aforesaid, it does appear that the Estate Officer is required to be directed to at least take on record the petitioner's application and thereafter deal with the same in accordance with law. Apart from the factual aspects, which obviously cannot be gone into by this Court, reference is required to be made to the provisions contained in Section 4(2)(b) of the said Act, which provide that the notice under Section 4(1) of

the said Act shall require all persons concerned, i.e. to say all persons who are, or may be, in occupation of, or claim interest in the public premises to show cause, if any, against the proposed order on or before said date as is specified in the notice being a date not earlier than seven days from the date of issuance thereof. Further the notice may also require such persons to appear before the Estate Officer on the date specified in the notice along with affidavit in support of the cause shown, and also for personal hearing, if such hearing is desired.

6] In the aforesaid circumstances, the Estate Officer cannot just refuse to take cognizance of the petitioner's application or decide the same in accordance with law.

7] In the petition, the petitioner has raised several issues with regard to the very jurisdiction of the Estate Officer to proceed with the matter. However, it is too premature to decide the said issues, at this stage. Ultimately, it will be for the Estate Officer to consider the petitioner's application and to decide the same in accordance with law.

8] Accordingly, this petition is disposed of with direction to the Estate Officer (respondent no. 2) to consider the petitioner's

application dated 14 November 2014 on its own merits and in accordance with law. For this purpose the petitioner or his constituted attorney may appear before the Estate Officer on 14 February 2015 at 3.30 p.m. along with an authenticated copy of this order. The Estate Officer, to thereafter fix the schedule, in the matter of deciding the petitioner's application dated 14 November 2014.

9] It is made clear that this Court has not expressed any opinion on the merits and demerits of the respective cases of the parties.

10] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

11] All parties to act on the basis of an authenticated copy of this order.

Chandka

(M. S. SONAK, J.)