

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11503 OF 2014

Bhagwan Jagannath Nitnaware .. Petitioner
vs.
National Institute of Industrial
Engineering through its Chairman
& Anr. .. Respondents

Mr. R. G. Panchal for Petitioner.
Mr. A. M. Nathani with Ms Jyotsna Wahane for Respondent No. 1.
Ms Pinaz Contractor for Respondent No. 2.

CORAM : M. S. SONAK, J.
DATE : 11 FEBRUARY, 2015

P.C. :-

1] Rule, with the consent and at the request of the learned counsels for the parties, Rule is made returnable forthwith.

2] Mr. R. G. Panchal, the learned counsel for the petitioner, at the outset submitted that the premises in question, from which the petitioner has already been evicted in pursuance of the impugned orders, were not at all '*public premises*' within the meaning assigned to this term under Section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ("said Act"). Mr. Panchal further submitted that although this issue was specifically raised before the Estate Officer and the Appellate Authority, there has been no adjudication upon this issue.

3] Mr. A. M. Nathani, the learned counsel appearing for the respondent no. 1 submitted that such precise issue was never raised before the Estate Officer. The issue raised before the Estate Officer was whether the Rent Control Act would be applicable in respect of the said premises.

4] Having heard the learned counsels for the parties and perused the record, there is no need to go to the question as to whether this precise issue was raised before the Estate Officer or not. This is because there is no dispute whatsoever that such precise issue was indeed raised before the Appellate Authority. Perusal of the impugned order made by the Appellate Authority indicates that there is no consideration whatsoever in respect of such issue.

5] Section 2(e) of the said Act defines '*public premises*' *inter alia* to mean any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government. Mr. Nathani, the learned counsel for the respondent no. 1 submits that the premises in question are clearly included within this part of the definition of 'public premises' contained in Section 2(e) of the said Act. On the other hand, Mr. Panchal contends that this cannot be

so, particularly because in the present case the respondent no. 1 is a society registered under the Societies Registration Act, 1860.

6] Rather than this Court going into the aforesaid issue, it would be appropriate if the impugned judgment and order dated 4 December 2014 made by the Appellate Authority is set aside and the matter is remanded to the Appellate Authority for decision upon the aforesaid jurisdictional issue. In fact, it was the duty of the Appellate Authority to have adjudicated upon this issue, since the same was specifically raised and further if upheld, then would go to the root of the jurisdiction.

7] Accordingly, the impugned order dated 4 December 2014 is set aside. The matter is remanded to the Bombay City Civil Court (Appellate Authority) for fresh consideration, including *inter alia* upon jurisdictional issue as aforesaid. The Appellate Authority shall endeavour to dispose of the appeal within a period of three months from today.

8] The parties to appear before the Appellate Authority on 3 March 2015 at 11.00 a.m. along with an authenticated copy of this order and thereafter obtain further directions in the matter of disposal of appeal.

9] In pursuance of the order made by the Estate Officer, the petitioner has already been evicted from the suit premises. There is some dispute as to whether such eviction was proper or not. Nevertheless the factum of eviction has been accepted. In these circumstances, there shall be no question of any restoration, pending the appeal before the Appellate Authority.

10] With the aforesaid observations, this petition is disposed of. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)

Chandka