

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11561 OF 2014

Shaikh Amar Shaikh Yusuf	..	Petitioner
VS.		
Estate Officer, Kirkee Cantonment		
Board & Anr.	..	Respondents

Mr. Chetan Damre i/b. Mr. Aniket Nikam for Petitioner.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE : 17 FEBRUARY, 2015

P.C. :-

1] This petition is directed against the judgment and order dated 18 November 2014 made by the District Court, Pune acting as appellate authority under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ("said Act"). By the impugned order, the appellate authority has dismissed the petitioner's appeal against the order dated 15 November 2010 made by the Estate Officer, directing the eviction of the petitioner from the suit premises.

2] Mr. Damre, the learned counsel for the petitioner made three submissions in support of the present petition :

(A) That the notice under the said Act ought to have been issued to his mother, since she too was the occupant of the suit premises consequent upon the demise of late Yusuf Shaikh, the petitioner's father;

(B) That the record would indicate that the respondents had themselves permitted the petitioner to install a three phase connection to the suit premises. The respondents are accordingly estopped under Section 115 of the Evidence Act from urging that the petitioner's occupation of the suit premises was unauthorised;

(C) That premises belonging to any Cantonment Board do not answer the definition of '*public premises*' within the meaning assigned to this term under Section 2(e) of the said Act.

3] Section 4 of the said Act requires the issue of notice upon persons in unauthorised occupation of public premises. In response to the notice, it is the petitioner who furnished the reply. In the reply, the petitioner did point out that his mother is the legal heir of late Yusuf Shaikh. But the petitioner also pointed out that the mother lives with the petitioner and is wholly dependent upon him. Besides the petitioner's mother did not make any application before the Estate Officer to be impleaded as a party on the ground that she alone has rights in respect of the suit premises.

4] The reply furnished by the petitioner, makes it clear that the same is not merely on his own behalf but also on behalf of his mother. In these circumstances, it cannot be said that the action impugned in the present case, is in any manner illegal or unfair.

5] The circumstance that at some stage, the petitioner was permitted to instal a three phase connection to the suit premises hardly attracts the doctrine of estoppel enshrined under Section 115 of the Evidence Act. Even the initial allotment of premises to the petitioner's fathers was for a time bound period. The allotment very clearly specify the time limit and stated that once the same expires, the petitioner's father had to remove himself from the suit premises.

It is doubtful whether the rights of such nature, which are more in the realm of licence are at all heritable. Accordingly, there is no substance in the allegations based upon estoppel.

6] If definition of '*public premises*' as contained in Section 2(e) of the said Act is perused, then sub section (2) thereof would reveal that any premises belonging to or taken on lease by or on behalf of any Cantonment Board constituted under the Cantonment Act, 1924, is included within the definition of 'public premises'. Besides, it does not appear that such a plea was ever raised by the petitioner either before the Estate Officer or the appellate authority. For all the aforesaid reasons, it is not possible to interfere with the impugned order. The petition is dismissed. There shall be no order as to costs.

7] The learned counsel for the petitioner prays for two months time to vacate the suit premises. Such time is granted. Respondents not to take any coercive steps for a period of two months from today.

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

(M. S. SONAK, J.)