

Gannon Dunkerley Holdings Pvt. Ltd.	}	Petitioner
versus		
Dena Bank and Ors.	}	Respondents

Mr. Rajesh L. Shethia with Mr. Chetan Shah
and Ms. Jyoti Vaity for the Respondents.

DATED :- JULY 2, 2015

This Writ Petition under Article 226 of the Constitution of India prays for calling of the records and the proceedings pertaining to the eviction proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short “the P. P. Act”) and on scrutiny thereof, it be declared that the order passed by the Estate Officer on 24th September, 2011 in case No. 7 of 2007 and the order passed by the City Civil Court, Mumbai on 15th March, 2012 in Miscellaneous Appeal No. 9 of 2012 are illegal, invalid, nullity and nonest in law. Therefore, they are not binding on the Petitioner.

Further, it is prayed that a recovery certificate dated 3rd October, 2012 seeking to recover a sum of Rs.1,25,74,293/- be also quashed and set aside. That is on the principle that if the main proceedings were without jurisdiction and the orders of eviction passed therein are a nullity, then, all consequential steps must fall to the ground. The Petitioner is entitled to relief in the nature of restitution and being put back in possession of office premises Nos.12-15, Dena Bank Building No. 2, 1st floor, 17, Horniman Circle, Mumbai 400 023. Mr. Thacker-learned Senior Counsel appearing for the Petitioner, at the outset, submitted that the basis on which all these reliefs are claimed is a Judgment and order of the Hon'ble Supreme Court of India in the case of *Dr. Suhas H. Pophale vs. Oriental Insurance Company Limited and its Estate Officer*, **Civil Appeal No. 1970 of 2014**, decided on 11th February, 2014.

2) Mr. Thacker submits that the objection on the other hand appears to be that this Judgment of Hon'ble Supreme Court and delivered by a two Judge Bench in *Dr. Suhas Pophale's* case (supra) is under reconsideration. Presently, the matter is referred to a three Judge Bench and is pending. However, so long as the Judgment of the two Judge Bench stands and is binding on this Court, this Court should either admit the Petition and consider the prayer for interim relief/stay

or adjourn the Petition till such time as the three Judge Bench delivers its verdict. Today, this Court cannot brush aside and ignore a binding Judgment in *Dr. Suhas Pophale's* case (supra).

3) Mr. Thacker submits that in *Dr. Suhas Pophale's* case (supra), the Hon'ble Supreme Court has made a distinction and categorised tenants of Public Sector Corporations and Central Government into those who were inducted prior to the P. P. Act becoming applicable and later, namely, post application thereof. In the present case, it is an admitted position that the Petitioner was inducted as a tenant in the premises in its erstwhile name in 1950-51. The Petitioner was a monthly tenant. The landlord was M/s. Devkaran Nanji Banking Company Limited. It was a public company but governed by the Indian Companies Act, 1956. It was carrying on business of banking. Its premises were therefore governed by the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short "the Rent Act). The banking business was nationalised in 1970. After nationalisation and consequential vesting of the assets and properties of private banks in a banking corporation set up by the Central Government under an Act of Parliament that the P. P. Act became applicable. Now, the Hon'ble Supreme Court having held that all such tenants and governed by the Bombay Rent Act cannot be evicted by

initiation of proceedings under the P. P. Act that the order passed by the Estate Officer, confirmed by the City Civil Court, Mumbai, by this Court and eventually upheld by the Hon'ble Supreme Court of India would be a nullity. The proceedings are completely without jurisdiction. No eviction proceedings under the P. P. Act could have been initiated, commenced and proceeded with against such tenants, who are governed by the Rent Act and who are inducted in the premises belonging to the Respondent Bank in this case, prior to the nationalisation of the banking business. It is only the post 1970 occupants to whom at best the P. P. Act could have been applied. Since it could not have been applied to the Petitioner from inception, the eviction proceedings and the orders therein are without jurisdiction. There is an inherent lack of jurisdiction. The orders when made by a Forum which lacks jurisdiction are a nullity. The defence of nullity can be set up at any stage. In the present case, the eviction proceedings may have ended, but what has been done by the Estate Officer is to issue a recovery certificate enabling the recovery of damages/compensation in the sum of Rs.1,25,74,293/- for the period commencing from 1st September, 2007 to 28th September, 2012 and further interest at 12% per annum from 29th September, 2012. These sums, if not paid, would be recovered as arrears of land revenue. The Petitioner apprehends that the Collector may proceed under the

Maharashtra Land Revenue Code, 1966 and attach the assets and properties of the Petitioner. In the circumstances, this Court should declare that no such recoveries can be made and until such declaration is issued, the recovery proceedings be stayed. Mr.Thacker submits that none of the principles such as *res-judicata* can be applied. This is not a case where there is a erroneous exercise of jurisdiction. This is a case where the Forum lacked jurisdiction from inception. This is a case of inherent lack of jurisdiction and therefore, the Judgment of the Hon'ble Supreme Court in the case of *A. R. Antulay vs. R. S. Nayak and Anr.* reported in **AIR 1988 SC 1531** would apply, equally the principles which have been enumerated in the case of *Ashok Leyland Ltd. vs. State of Tamil Nadu and Anr.* reported in **(2004) 3 SCC 1** could be invoked by the Petitioner. There is no finality attached to such Judgments as are rendered in proceedings which are without jurisdiction. The orders in such proceedings being nullity, the aforementioned principles will have no application.

4) On the other hand, Mr. Shethia appearing on behalf of the Respondent Bank submits that this Writ Petition need not be entertained because the Petitioner has already handed over possession. Parties have acted upon the order of eviction passed and confirmed throughout. Now, the proceedings are concluded and reopening of the same in any

garb is impermissible in law. It is submitted that this is not a case where the Forum, namely, the Estate Officer lacked jurisdiction from inception or that the proceedings were *void ab initio*. This is a case of a subsequent Judgment of the Hon'ble Supreme Court of India and taking a different view. Based on the same proceedings inter parties cannot be commenced afresh. The orders inter parties in the concluded proceedings would bind the litigants before us. This Court, in its jurisdiction under Article 226 of the Constitution of India, therefore, cannot now interfere therewith and the Writ Petition must be dismissed.

5) With the assistance of the learned Counsel appearing for both sides, we have perused the Writ Petition and the Annexures thereto. It is common ground that the Estate Officer passed an order under sub section (1) of section 5 of the P. P. Act and that order dated 24th September, 2011 not only directs the eviction under section 5 of the P. P. Act, but also recovery of damages and arrears of rent. That operative order at page 101 of the paper book reads as under:-

“I am taking out following orders:-

- (i) Order of eviction under Section 5 of the Public Premises Act.
- (ii) There is order as to arrears of rent under section of the Section 7(1)(2A) Public Premises Act.
- (iii) Order for recovery of damages with interest under Section 7(2)(2A) of the Public Premises Act.
- (iv) There is no order as to cost.”

6) It is this order which was challenged in Miscellaneous Appeal No. 9 of 2012 and the learned Judge of the City Civil Court Bombay on 15th March, 2012, dismissed the Miscellaneous Appeal and confirmed the order of the Estate Officer dated 24th September, 2011, but modified the rate of interest payable on damages, from 12% to 9% per annum.

7) The Petitioner was aggrieved and dissatisfied with this order and approached this Court by filing Writ Petition No. 3648 of 2012. That Writ Petition was dismissed after hearing both sides by this Court on 25th June, 2012. Thereafter, a Special Leave Petition was preferred in the Hon'ble Supreme Court of India, which also came to be dismissed on 26th April, 2013. The certificate under section 14 of the P.P. Act, which was just to enable recovery of the sums and directed under the order of the Estate Officer came to be issued and that also in the month of October, 2012.

8) The present Writ Petition is founded on a communication from the Advocates of the Petitioner, addressed on 24th February, 2014, wherein, these concluded orders were sought to be questioned by relying on a later Judgment of the Hon'ble Supreme Court of India in the case of *Dr. Suhas Pophale's* case (supra).

9) True it is that the Judgment is taking the view and as urged by Mr. Thacker before us. However, we find that with the aid and assistance of that Judgment, we cannot reopen the controversy. It is not permissible for us in our jurisdiction under Article 226 of the Constitution of India to go behind the orders of the Estate Officer and the City Civil Court and consider a challenge to them at this stage. The correctness of these orders was in issue before this Court in the Writ Petition, which was dismissed by a learned Single Judge on 25th June, 2012 and the order has not been interfered with by the higher Court, as the Special Leave Petition was dismissed. If we were to go into the issue raised by Mr. Thacker and now, then, we would be required to go behind and reopen the concluded proceedings and the final orders therein. There is no dispute that they bind the parties. In a distinct case and distinct eviction proceedings against totally different parties, the matter was later carried to the Hon'ble Supreme Court of India and considered by it. There is no principle of law by which we would be permitted to reconsider the issue and which stands concluded against the present Petitioner.

10) We are afraid that to such controversy, the Judgments of the Hon'ble Supreme Court of India in the cases of *A. R. Antulay* (supra) and *Ashok Leyland* (supra) will have no application. In *A. R. Antulay's*

case (supra), the argument was that the mandate of Article 21 of the Constitution of India is violated simply because the Appellant accused was proceeded against on charges and arising out of sections 161 and 165 of the Indian Penal Code earlier and then forming part of section 5 of the Prevention of Corruption Act, 1947. There were certain offences alleged and punishable under the Indian Penal Code. The complaint was filed and which led to the Special Judge exercising powers under the Prevention of Corruption Act, taking cognizance. However, in an Appeal filed by Respondent No. 1 R. S. Nayak directly under Article 136 of the Constitution of India, Respondent No. 1 persuaded the Hon'ble Supreme Court of India to interfere with the order of the Special Judge discharging the accused/Appellant A. R. Antulay and which order came to be set aside by the Hon'ble Supreme Court of India, but, the Hon'ble Supreme Court of India withdrew the special cases from the file of the Special Judge, Greater Mumbai and transferred them to the Bombay High Court with a request to the Hon'ble the Chief Justice to assign the special case to a learned Sitting Judge of this Court and for holding a day to day trial. Thus, the trial of a case before the competent Special Judge was interfered with by withdrawing the special case from his file and transferring it to a higher Court. The Trial Court was thus denuded of its power validly conferred by law and the matter was to proceed before a higher Court, which was rather a Appellate Forum. Antulay

was deprived of his valuable legal right of Appeal in this manner. It is this development which led the Hon'ble Supreme Court of India to consider a challenge to its own direction and the same being ab initio void and without jurisdiction. It is in dealing with such controversy and arising out of the orders made earlier by its own Bench that the Hon'ble Supreme Court of India has ruled on the doctrine that act of Court causes prejudice to none. It is the act of Court which resulted in deprivation of Mr. Antulay's constitutional rights and flowing from Articles 14 and 21 of the Constitution of India. It is in this backdrop that the observations relied upon by Mr. Thacker and in paras 42, 43 and the later paragraphs have been made. We cannot therefore lose sight of the context in which the Hon'ble Supreme Court of India recalled its earlier directions and thereafter, the matter was to proceed before the Court competent to deal with it and in accordance with law. The principle laid down in this decision can have no application to the facts and circumstances of the present case. The principle of finality of Judgments and rendered inter parties would apply in the matter before us and while applying the same, there is no prejudice being caused and by act of any Court. Rather, the Courts applied the law which stood when the Judgments were delivered to the facts and circumstances of the Petitioner's case. These decisions having been questioned right up to the highest Court and the Petitioner failing therein does not mean that

we must recall an order validly and legally made, by relying on some subsequent pronouncement of the Hon'ble Supreme Court of India and stated to be on law. In the present case, we are satisfied that neither of the constitutional safeguards have been violated nor is there any miscarriage of justice. We also do not find any justification for entertaining this Petition as none of the acts of any Court have caused any prejudice to the Petitioner.

11) Similarly, in *Ashok Leyland's* case (supra), on facts, the Hon'ble Supreme Court of India found that it would not be appropriate to non-suit the litigant on the principle of res-judicata. The Hon'ble Supreme Court of India clarified that a jurisdictional question, if wrongly decided, would not attract the principle of res-judicata. When an order is passed without jurisdiction, the same becomes a nullity. When an order is a nullity, it cannot be supported by invoking the procedural principles like res-judicata. We do not find that this principle has any application to the present case. The orders passed by the Estate Officer and upheld by the City Civil Court and equally by this Court are not a nullity. There is a distinction between assumption of jurisdiction by a Court or Forum and which it never possesses in law and the Court which assumes jurisdiction rightly but makes a erroneous order. The erroneous order can be questioned by resorting to remedies

like Appeal, Revision in higher Court. A erroneous order, therefore, can be set aside by a procedure known to law. It can be reversed, quashed or declared to be invalid and illegal in such legal proceedings by the competent Courts. Such orders are not nullity. If they are not nullity nor is the Forum passing them lacking inherent jurisdiction, then, the principles of finality of Judgments and res-judicata would definitely have an application. In the circumstances, we do not think that para 118 of the decision of the decision in *Ashok Leyland's* case (supra) would have any application to the present matter and the facts involved therein.

12) We do not find that the recovery proceedings in this case and which are but part and parcel of the order of eviction and the consequence legally flowing therefrom can be said to be vitiated for want of jurisdiction nor can the recovery certificate be declared as null an void. The same has been issued after the eviction order stood finally confirmed. There is a power in the Estate Officer to make an order for payment of arrears of rent and equally to impose damages. That order and direction can be made in an eviction order. In the circumstances, we do not think that when the eviction order itself was composite in nature and it being confirmed throughout that the recovery certificate can be questioned by the Petitioner. It is but a fallout of the

unauthorised occupation of the Petitioner/occupant and its eviction therefrom.

13) As a result of the above discussion, we do not accept either requests of Mr. Thacker. We do not find any merit in this Writ Petition and it deserves to be dismissed. The Petition is therefore dismissed. No costs.

(G.S.KULKARNI, J.)

(S.C.DHARMADHIKARI, J.)