

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Second Appeal No. 110/2011
(Union of India through Secretary, Ministry of Defence and ors. .vs. Park View Cooperative Housing Society Ltd. and another)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders or directions
 and Registrar's orders

Court's or Judge's orders.

Dr. R.S. Sundaram, Advocate for Appellants.
 Mr. N.W. Sambre, Advocate for Respondent no.1.
 Mr. A.C. Dharmadhikari, Advocate with Mr. Mahesh Gupta, Advocate
 for Respondent no.2.

CORAM : A.V. Nirgude, J.
DATED : April 15, 2015.

1. Heard Mr. R.S. Sundaram, learned counsel for the appellants, Mr. N.W. Sambre, learned counsel for Respondent no.1 and Mr. A.C. Dharmadhikari, learned counsel for respondent no.2.

2. The facts leading to this litigation are as under:-

Land Kh. No.343 of Sitabuldi, Nagpur is the suit property. On this land, the respondents' residential colony is situated. The cause of action for this suit arose because the appellants gave notice under Section 5A of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short "the Act") to the respondent no.1 Cooperative Society thereby alleging that the land in their possession belonged to the Union of India and was thus a 'public premises'. They also alleged that the respondents are 'unauthorized occupants' and they were about to start construction. They wanted demolition of such structures and removal

of the respondent society.

3. Instead of responding to this notice as per the provisions of the Act, the respondents filed the suit for declaration that the notice was bad in law and for perpetual injunction restraining the appellants from acting on the notice. The first and foremost issue that arose between the parties is whether such suit was maintainable in view of Section 15 of the Act. However, the judgments of the Courts below did not throw much light on this issue though an issue was framed to that effect. The Courts below gave unnecessary importance to issue of title which was rather impertinent in this litigation. The respondents/plaintiffs came with a case as stated above that they are owners and, therefore, the Courts below asked them to prove their title. On the basis of evidence that they led, the Courts below held that they succeeded in showing their title etc. But the question between the parties as to whether the suit was maintainable remained virtually unanswered. That would give rise to substantial question of law in this second appeal.

Whether the suit was maintainable in the teeth of the provisions of Section 15 of the Act?

4. Before I could answer this question, on the basis of contents of the plaint and the provisions of the Act, it was brought to my notice that the notice itself has now become infructuous.

5. The appellants themselves filed substantive suit based on title for possession of the suit land. As indicated above, all along the parties claimed title

against each other. Initially the appellants tried to use provisions of the Act for effecting eviction of the respondent society. When this litigation erupted and continued for quite some time, it seems the appellants thought it fit that they should start substantive litigation in civil court for proving title and taking possession. The suit was filed in 1994 and it is still pending in first appeal Court.

6. In view of this development, I think it would be proper for me to dispose of this suit saying that this is now infructuous. I must also record that the findings recorded in this suit specially on title are also infructuous and not binding on the parties as well as the Courts. The parties would now go before the first appeal Court where the appeal is pending and get their title proved.

7. In view of the discussion above, the appeal stands disposed of.

JUDGE