

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 6581 OF 2016

Bhaishanker Kanga and Girdharlal,
Advocates And Solicitors, and Anr.

...Petitioners

Versus

Life Insurance Corporation Of India
And Ors.

...Respondents

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Mr. Mayur Khandeparkar a/w. Mr. A.I. Talegaonkar, Ms. Meera Patel and Ms. Urvi Patel i/b. M/s. M.M. Patel & Co., for the Petitioners.

Mr. Shriniwas Bhavé i/b. Bhavé & Company, for Respondent No.1.

Mr. Jeetendra Ranawaf, Advocate for Respondent No.3.

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CORAM : R. G. KETKAR, J.

DATE : 03rd OCTOBER, 2016

P.C.

1. As the regular Court presided over by Hon'ble Justice K.K. Tated has passed 'not before me' order, the petitioners have moved this Court as per the Administrative Order passed by Hon'ble the Chief Justice.

2. Heard Mr. Mayur Khandeparkar, learned Counsel for the petitioners and Mr. Shriniwas Bhavé, learned Counsel for respondent No.1 and Mr. Jeetendra Ranawaf, learned Counsel for respondent No.3, at length.

3. By this Petition under Article 227 of the Constitution of India, the petitioners hereinafter referred to as the 'opponents No.2 & 4' have challenged the order dated

10.3.2016 passed by the Estate Officer appointed under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 [for short, 'Act']. By that order, the Estate Officer rejected the application dated 23.2.2016 made by opponents No.1 to 4 raising objection that respondent No.1, hereinafter referred to as the 'applicant' who examined witness No.2 Avinash Pagare has filed affidavit which has not been stamped with Rs.100/- stamp duty as required by the Maharashtra Stamps Act (for short, 'Stamp Act'). Opponents No.1 to 4 also objected to that affidavit on the ground that it does not bear the notarized stamp of Rs.25/- as is required by law. In the circumstances, an affidavit in lieu of examination-in-chief is not an evidence in the eyes of law and therefore, opponents No.1 to 4 cannot commence the cross-examination of said witness.

4. In support of this Petition, Mr. Khandeparkar strenuously contended that under Article 4 of the Stamp Act, an affidavit must be stamped with Rs.100/-. Article 4 also lays down Exemptions in relation to affidavit or declaration in writing when made for the immediate purposes of being filed or used in any Court or before the Officer of any Court. He submitted that exemption (b) under Article 4 is not applicable in the facts of the present case. He submitted that essentially an Estate Officer is not a Court. He has invited my attention to the provisions of the

Act and in particular Sections 2(b), 3, 5, 7, 8 and 9 thereof. Section 8 of the Act confers powers on an Estate Officer in terms of sub-clauses (a) to (c). The Estate Officer, however, cannot be construed as a Court. In support of this proposition, he relied upon following decisions:

- [i] ***Nandini J. Shah and another vs. Life Insurance Corporation of India and others, 2008(4) Mh.L.J.106***, and in particular paragraph-7 thereof;
- [ii] ***S.D. Joshi and others vs. High Court of Judicature at Bombay and others, (2011) 1 SCC 252***, and in particular paragraph-29 thereof; and
- [iii] ***Association of Recognized Agents Regional and State Transport Authority vs. Chief Executive Engineer & Ors., 2014(4) Bom. C.R. 618***, and in particular paragraph-16 thereof.

5. Mr. Khandeparkar submitted that all the Courts are Tribunals but all the Tribunals are not Courts. Even if the Estate Officer is required to decide the matters before him judicially, that does not make him a Court or even a Tribunal. He submitted that the Estate Officer has no power to condone the delay as also has no power either to make reference to High Court under the Contempt of Courts Act or even punish a party under the Contempt of Courts Act. In short, the Estate Officer cannot be equated with Court and consequently exemption (b) under Article 4 of the Stamp Act is not applicable. He submitted that

unless and until an affidavit in examination-in-chief of witness No.2 Avinash Pagare bears stamp duty of Rs.100, it cannot be admittedly an evidence in the eyes of law and consequently no cross-examination can be conducted.

6. On the other hand, Mr. Bhave supported the impugned order. He relied upon the decision of **Virendar Kumar Satyawadi vs. State of Punjab, AIR 1956 SC 153** and in particular paragraph-6 thereof. In paragraph-6, Apex Court reproduced the passage from **Bharat Bank Ltd. vs. Employees of Bharat Bank Ltd., AIR 1950 SC 188**, wherein it is observed that when the question raised is whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.

7. I have considered rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. Before I consider the submissions advanced by learned Counsel appearing for the parties, it is necessary to consider the provisions of the Act. Section 2(b) defines the expression "Estate Officer" to mean an officer appointed as such by the Central Government under Section 3. Section 3 empowers the Central Government, by a notification in the Official Gazette to appoint persons to be Estate Officers for the purpose of

the Act. Section 5 lays down that after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and ***any evidence produced by him in support of the same and after personal hearing***, if any, given under sub-clause (ii) of clause (b) of sub-section (2) of section 4, the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer shall make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order but not later than fifteen days from the date of the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises. Section 8 lays down the powers of Estate Officers and reads thus :

“8. Powers of estate officers.-- An estate officer shall, for the purpose of holding any inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908(5 of 1908), when trying a suit, in respect of the following matters, namely:--

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) any other matter which may be prescribed.”

Section 9 provides for an appeal against every

order of the Estate Officer in respect of any public premises under Section 5 of Section 5-B or Section 5-C or Section 7. Section 10 lays down finality of the orders. It provides that every order made by an estate officer or appellate officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act. Section 15 lays down that no Court shall have jurisdiction to entertain any suit or proceeding in respect of clauses (a) to (e) incorporated thereunder. Under Section 18, the Rules, namely, Public Premises (Eviction of Unauthorized Occupants), Rules 1971 are framed (for short, 'Rules'). Rule 5 thereof lays down the procedure for holding of inquiries and it reads thus :

“5. Holding of inquiries.-- (1) Where any person on whom a notice or order under this Act has been served desires to be heard through his representative he should authorise such representative in writing.

(2) The estate officer shall record the summary of the evidence tendered before him. The summary of such evidence and any relevant documents filed before him shall form part of the records of the proceedings.”

8. In the case of **Nandini** (supra), the question that

firstly fell for consideration before the Division Bench of this Court was the order passed by the Estate Officer declining to frame certain issues on the ground that all the provisions of Code of Civil Procedure, 1908 (for short, 'C.P.C.') are not applicable to the proceedings before the Estate Officer and secondly, where it has been directed that the petitioners (opposite parties) before the Estate Officer to prove their authority to occupy the premises and requiring them to start evidence in the first instance. After considering the provisions of Section 8 of the Act, Division Bench observed that the provisions of C.P.C. are not strictly applicable to the proceedings before the Estate Officer and the Estate Officer is also not expected to follow the detailed procedure as contemplated under the provisions of C.P.C.. Section 8 gives power of a Civil Court to the Estate Officer limited for the purposes which are specified in that Section. Thus to this limited extent, Section 8 confers power of a Civil Court to the Estate Officer. In view thereof, I am clearly of the opinion that the affidavit filed by the applicant's witness No.2 Avinash Pagare does not require stamp of Rs.100/-. Mr. Khandeparkar fairly stated that other objection that affidavit does not bear notarized stamp of Rs.25/- is no longer available to the petitioners.

9. In the case of **S.D. Joshi** (supra), the questions that fell for consideration before Apex Court were the scope of expression "Judicial Office" appearing in Article 217(2) of

the Constitution of India and whether the Family Court has the trappings of a Court and the Family Court judges, being the Presiding Officers of such courts, on the claimed parity of jurisdiction and functions, would be deemed to be the members of the Higher Judicial Services of the State and lastly whether the Family Court Judges are eligible and entitled to be considered for elevation as Judge of the High Court in terms of Article 217 of the Constitution of India. In paragraph-29, Apex Court dealt with distinction between a “Court” and a “Tribunal”. Apex Court reproduced paragraphs-32, 33 and 36 of *Harinagar Sugar Mills Ltd. V. Shyam Sunder Jhunjhunwala*, AIR 1961 SC 1669, wherein it is observed that the Tribunals are very similar to Courts but are not Courts. When the Constitution speaks of 'courts' in Articles 136, 227 or 228 or in Articles 233 to 237 or in the Lists, it contemplates courts of civil judicature but not tribunals other than such courts. Broadly speaking certain special matters go before the tribunals, and the residue goes before the ordinary courts of civil judicature. Their procedures may differ, but the functions are not essentially different. What distinguishes them has never been successfully established. The decision in *Shell Co. of Australia v. Federal Commr. Of Taxation*, 1934 AC 275 : 1930 ALL FR Rep 671, was referred wherein it was observed that the authorities are clear to show that there are tribunals with many of the trappings of a court, which,

nevertheless, are not courts in the strict sense of exercising judicial power. In substance, Apex Court observed that all Tribunals are Courts though all Courts are not Tribunals.

10. In the case of ***Association of Recognized Agents and State Transport Authority (supra)***, the learned Single Judge of this Court was considering the question whether the provisions of Limitation Act would apply to quasi judicial proceedings before the Estate Officer. In that context, the learned Single Judge held that the Estate Officer is not a Court and consequently has no power to condone the delay. In paragraph-16, the learned Single Judge considered the question as to whether the provisions of Limitation Act would apply to quasi-judicial proceedings before Estate Officer. The decision of Division Bench of Madhya Pradesh High Court in the case of ***L.S. Nair v. Hindustan Steel Ltd., Bhilai and others, A.I.R. 1980 M.P. 106*** was reproduced. The Division Bench of Madhya Pradesh High Court held that the Limitation Act cannot be made applicable to the proceedings before the Estate Officer. In paragraph-17, the decision of Apex Court in the case of ***L.S. Synthetics Ltd. v. Fairgrowth Financial Services Ltd and another, 2005(Supp.) Bom. C.R. 656(S.C.) : (2004) 11 S.C.C. 456*** was referred. In that decision, it was held that the provisions of the Limitation Act are not applicable to the proceedings before the quasi-

judicial tribunal.

11. Section 33 of the Stamp Act provides for examination and impounding of instruments. It lays down that subject to the provisions of section 32-A, every person] having by law or consent of parties authority to receive evidence and every person in charge of a public office, except an officer of police [or any other officer, empowered by law to investigate offences under any law for the time being in force,] before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same [irrespective whether the instrument is or is not valid in law.]

12. It is also relevant to note that the amendment made to C.P.C. and in particular Order 18 Rule 4 thereof. Sub-rule (1) thereof lays down that in every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence. We are not concerned here with proviso to sub-rule (1). Sub-rule (2) lays down that the evidence (cross-examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court shall be taken either by the Court or by the Commissioner appointed

by it. Prior to amendment of C.P.C., sub-rule (4) thereof laid down that the evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the Judge. In order to obviate the delay in recording of the oral evidence in examination-in-chief, Rule 4 of Order 18 is substituted by C.P.C. Amendment of 2002 w.e.f. 1.7.2002. In other words, if the evidence of the witness including that of examination-in-chief was to be recorded as per the old Rule 4, it cannot be disputed that there is no necessity of affixing stamp duty of Rs.100/-. Having regard to the provisions of Article 4, exemption (b) and Section 33 of the Stamp Act as also Section 8 read with Rule 5 of the Rules and Order 18 Rule 4 of C.P.C., I am of the opinion that the affidavit is not required to be stamped with Rs.100/- as contended by opponents No.1 to 4.

13. Article 4 of the Stamp Act reads thus:

	Description of Instrument	Proper stamp duty
4	AFFIDAVIT , that is to say, a statement in writing purporting to be a statement of facts, signed by the person making it and confirmed by him on oath or, in the case of persons by law allowed to affirm or declare instead of swearing, by affirmation.	One hundred rupees
	Exemptions Affidavit or declaration in writing when made --	

	(a) as a condition of enrollment under the Air Force Act, 1950, (XLV of 1950) the Army Act, 1950 (XLVI of 1950) or the Navy Act, 1957 (LXII of 1957); (b) for the immediate purposes of being filed or used in any Court or before the officer of any Court; or (c) for the sole purpose of enabling any person to receive any pension or charitable allowance.	
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. Perusal of exemption (b), extracted hereinabove, shows that the affidavit or declaration in writing when made for the immediate purposes of being filed or used in any Court or before the officer of any Court are exempted from payment of stamp duty of Rs.100/-.

14. In the case of **Virindar Kumar Satyawadi** (supra), Apex Court considered the decision in **Bharat Bank Ltd.** (supra) and observed that when the question raised is whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.

15. Section 3 of the Indian Evidence Act, 1972 defines the expression "Court" to include all Judges and Magistrates, and all persons, except arbitrators, legally authorized to take evidence. Section 8 of the Act read with Rule 5 of the Rules authorizes Estate Officer to record

evidence and shall have the same powers as are vested in a Civil Court under C.P.C. when trying a suit in respect of matters (a) to (c) enumerated in Section 8. Thus as contemplated by Section 32-A of the Stamp Act, Estate Officer has authority to receive evidence. Article 4 of the Stamp Act lays down that a statement in writing purporting to be a statement of facts, signed by the person making it and confirmed by him on oath or, in the case of persons by law allowed to affirm or declare instead of swearing, by affirmation, proper stamp duty payable is Rs.100/-. Exemption (b) thereunder provides that affidavit or declaration in writing when made for the immediate purposes of being filed or used in any Court or before the officer of any Court is not required to be affixed by Rs.100/- stamp. In view of decision of **Nandini** (supra) as also Section 8 of the Act, the Estate Officer is conferred powers of a Civil Court for the limited purposes specified in that Section. I, therefore, do not find that the Estate Officer has committed any error in passing the impugned order. The decisions relied by Mr.Khandeparkar do not advance the case of the petitioners. Rather in the case of **Nandini** (supra) Division Bench of this Court has held that to the limited extent the Estate Officer exercises the power of a Civil Court. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)