

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 14282 OF 2016**

Dattatraya Electroplating Works & Ors	...Petitioners
<i>Versus</i>	
Dena Bank	...Respondent

Mr KN Kandekar, *for the Petitioners.*
Mr Rajesh Shethia, *a/w Ms Chetna D, for the Respondent.*

CORAM: G.S. PATEL, J
DATED: 29th November 2017

PC:-

1. The writ petition takes exception to an order and judgment dated 18th March 2016 of the Appellate Bench of the Small Causes Court at Mumbai dismissing the Petitioners' appeal and confirming the order and judgment dated 30th November 2015 of the Trial Court passed on Exhibit 9, a jurisdictional determination application filed in the Petitioners' declaratory RAD Suit No. 1356 of 2015.

2. A short summation of the factual conspectus is this. The Plaintiffs claim to be protected tenants in respect of Room Nos. 1 to 5, Shivsadan Building, JSS Road, Thakurdwar, Mumbai 400 002. There they carry on an electroplating business. The 1st Defendant to the suit, the sole Respondent, is Dena Bank, constituted under

the Banking Companies (Acquisition and Transfer of Undertaking) Act 1970.

3. The short controversy in issue and to which I will return presently is whether it is the Maharashtra Rent Control Act 1999 or the Public Premises (Eviction of Unauthorised Occupants) Act 1971 governs the case at hand.

4. The Plaintiffs' case was that on 26th November 1948, the then sole proprietor of Dattatraya Electroplating Works, one Sitaram Bhikaji ("**Sitaram**"), entered into an Indenture for Sale with the Plaintiffs' partners' grandfather one Narhari Jagannath Mahajan ("**Mahajan**"). Sitaram, the Plaintiffs allege, sold the entirety of his business of Dattatraya Electroplating Works with its accompanying goodwill to Mahajan, and with this went, according to the Plaintiffs, the tenancy of the 1st Plaintiff firm in these premises. The Plaintiffs say that Dena Bank or its predecessor-in-title knew of this transaction between Sitaram and Mahajan, and that Dena Bank accepted rent from the present Plaintiffs. There is an argument of acquiescence leading to a further submission that the Plaintiffs are "deemed tenants" under the Maharashtra Rent Act.

5. The Plaintiffs also say that since 1948, Dena Bank's staff has periodically inspected and visited the suit premises and even permitted tenantable repairs to be effected. This tenancy was created prior to 1st February 1973, thus protecting the Plaintiffs.

There are of course other documents of business being done in these premises but these are not immediately material.

6. On 30th March 2013, Dena Bank terminated the Plaintiffs' right to continue in occupation. It did so under the Public Premises Act and it said that the Plaintiffs were unauthorised occupants under that Act. There followed a show cause notice from Dena Bank's Estate Officer in proceedings by which Dena Bank sought eviction. The ground for eviction *inter alia* was Dena Bank's *bona fide* need for these premises.

7. The Plaintiffs brought suit for these reliefs:

"(a) That it be declared by a Decree and Order of this Hon'ble Court that the Plaintiffs are lawful tenant/occupants in respect of the suit premises i.e. Room Nos. 1 to 5, Shiv Sadan, J. S. S. Road, Mumbai- 400 002 and are entitled to peaceful use, occupy and possess the same as the lawful tenant thereof.

(b) That this Hon'ble Court may pleased to pass permanent order and injunction restraining Defendant No.1, their agents, servants, representatives, workers etc. from dispossessing the plaintiffs or interfering, obstructing, disturbing, quiet and peaceful use, occupation and possession of Plaintiffs in suit premises being Room Nos. 1 to 5, Shiv Sadan, J. S. S. Road, Mumbai- 400 002 or part thereof.

(c) That pending the hearing and final disposal of the suit, the defendant No.1 its agents, servants, representatives, assignees, any third party claiming through or under the Defendant No.1 be restrained by an

order and injunction of this Hon'ble Court from in any way obstructing or interfering with peaceful use occupation, possession and enjoyment of the suit premises viz. Room Nos. 1 to 5, Shiv Sadan, J. S. S. Road, Mumbai-400 002.

(d) That the pending the hearing and final disposal of this suit, the proceedings initiated under the Public Premises Act, 1971 by the Defendant No.1 being Case No.EO/PP & E/R/5 of 2013 against these plaintiffs be stayed.

(e) Interim and ad-interim reliefs in respect of clause (c) and (d) above be granted.

(f) For cost of this suit.

(g) For such other orders, directions and reliefs as may be just, proper, and necessary in the nature and circumstances of the suit be granted.

(Emphasis added)

8. Before the Trial Court, in an application numbered as Exhibit 9, the Plaintiffs sought a temporary injunction in these terms and specifically sought a stay of the proceedings pending before the Estate Officer under the Public Premises Act. There is a fundamental problem with this prayer (reproduced in the emphasized portion above). It proceeds on the assumption, entirely erroneous, that the Estate Officer is an authority subordinate to and amenable to the jurisdiction of the Court of Small Causes at Bombay. Merely because there are two statutes that pertain to the same premises, and under one of those there is a special authority constituted or designated, and under the other there is a Court, it does not follow that the designated authority is subordinate to the

Court. Each will operate under its own statute. The Estate Officer under the Public Premises Act is not an authority subordinate to or amenable to the jurisdiction of any Judge of the Small Causes Court.

9. In the application, Dena Bank took its other defences including a denial of knowledge the sale of the business, a denial of any acquiescence and so on. Ultimately, after hearing both sides, the Trial Court dismissed the Plaintiffs' application for injunction, Exhibit 9. The Plaintiffs filed the present miscellaneous appeal before the Appellate Bench.

10. The first issue that arose was the question of jurisdiction and here the Plaintiffs placed reliance on the Supreme Court decision in *Dr Suhas S Pophale v Oriental Insurance Company Ltd.*¹ It was specifically urged that since the Plaintiffs were in occupation since 1948, prior to the constitution of the Dena Bank under its statute, therefore they would be governed not by the Public Premises Act but by the Maharashtra Rent Act. In *Suhas Pophale's* case, the statute in question came into force on 16th September 1958 when that respondent, the Life Insurance Corporation, was constituted. What the Plaintiffs relied on were the observations that those excluded from the purview of the Public Premises Act are persons in occupation prior to the coming into force of the constituting act of the public authority. In the present case, on the Plaintiffs' formulation this would include, presumably, all occupants in existence and occupation prior to 1970 when the Banking

1 AIR 2014 SC 1509

Companies Acquisition Act came into force. In *Suhas Pophale*, the Supreme Court said this in paragraph 48:

"48. As far as the eviction of unauthorised occupants from public premises is concerned, undoubtedly it is covered under the Public Premises Act, but it is so covered from 16.9.1958, or from the later date when the concerned premises become public premises by virtue of the concerned premises vesting into a Government company or a corporation like LIC or the Nationalised Banks or the General Insurance Companies like the Respondent no.1. **Thus there are two categories of occupants of these public corporations who get excluded from the coverage of the Act itself. Firstly, those who are in occupation since prior to 16.9.1958, i.e. prior to the Act becoming applicable, are clearly outside the coverage of the Act. Secondly, those who come in occupation, thereafter, but prior to the date of the concerned premises belonging to a Government Corporation or a Company, and are covered under a protective provision of the State Rent Act, like the Appellant herein, also get excluded. Until such date, the Bombay Rent Act and its successor Maharashtra Rent Control Act will continue to govern the relationship between the occupants of such premises on the one hand, and such government companies and corporations on the other. Hence, with respect to such occupants it will not be open to such companies or corporations to issue notices, and to proceed against such occupants under the Public Premises Act, and such proceedings will be void and illegal. Similarly, it will be open for such occupants of these premises to seek declaration of their status, and other rights such as transmission of the tenancy to the legal heirs etc. under the Bombay Rent Act or its successor Maharashtra Rent Control Act, and also to**

seek protective reliefs in the nature of injunctions against unjustified actions or orders of eviction if so passed, by approaching the forum provided under the State Act which alone will have the jurisdiction to entertain such proceedings."

(Emphasis added)

11. Apart from the fact that this decision has been referred to and is currently pending before a larger bench of the Supreme Court, and which of course does not mean that it ceases to be authoritative in the interregnum, the factual and legal matrix in the present case does not afford the Plaintiffs the reliefs that they seek. First, the entire thrust of the application was to stop the proceedings under the Public Premises Act before the Estate Officer. That injunction could not be sought from the Small Causes Court. Prayer clause (d) was misconceived and was rightly rejected. The Appeal Court held as much in paragraph 18 (although there appears to be a small typographical error).

12. But the Appeal Court went further. It looked at the factual context, including that it was Sitaram who was the tenant, and that at no point were the Plaintiffs authorised by Dena Bank to occupy the premises. The Deed of Assignment of the business was not proved. It was very much in dispute. All rent receipts were shown to be only in the name of Sitaram, and therefore if anybody could claim the benefit of the decision of the Supreme Court in *Suhas Pophale* it was, at the highest, Sitaram Bhikaji, or perhaps his heirs or descendants.

13. Then there is no substance whatsoever to the claim based on being settled possession of some longevity. That kind of a submission has no place in proceedings such as these.

14. The Writ Petition assails the appellate order which consequently dismissed the appeal as being erroneous, contrary to law and against equity. There is a suggestion that it is perverse. To my mind it is nothing of the kind. A contrary view indeed would have wholly unsustainable and very likely would have suffered from the vice of perversity.

15. The Writ Petition is entirely without merit. It fails. It is rejected. No costs.

(G. S. PATEL, J)