

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 7844 OF 2013

Bank of Maharashtra

...Petitioner

Vs.

Smt. Aarti P. Gore,

Through P.A. Gore and Ors.

...Respondents

Mr. D.G. Mishra a/w. Ms. Meena Bhalerao i/b. Hammurabi & Solomon for
Petitioner

Mr. V.S. Kapse, Senior Advocate i/b. Nikhil S. Rajeshirke for Respondents

CORAM: M.S.SANKLECHA, J.

DATE : 27th SEPTEMBER, 2017.

P.C:-

This petition under Article 227 of the Constitution of India challenges the order dated 8th May, 2013 passed by the Principal Judge, City Civil Court, Mumbai. By the impugned order passed under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (Act), the appeal of the Respondents from an order dated 28th September, 2012 passed by the Estate Officer under Section 5A of the Act

was allowed.

2. At the very outset, Mr. Kapse, learned counsel appearing for the Respondents raised a preliminary objection that the petition cannot be entertained in view of the fact that the Respondents and/or their predecessor were in possession of the premises substituted in 1987 for a new premises before the earlier / old premises becoming a public premises. Therefore, in view of the decision of **Dr. Suhas H. Phophale Vs. Oriental Insurance Co. Ltd. And Its Estate Officer [2014 (4) SCC 657]**, said Act would have no application. This for the reason that the Respondent is in possession of the public premises prior to the property becoming a public premises under the Act.

3. Mr. Mishra, learned counsel appearing for the Petitioner contested the same. It was pointed out that there is nothing on record to indicate that the Respondents came into the possession of the original property (before being substituted in 1987) after the said premises becoming a public premises owned by the Petitioner Bank.

4. Mr. Kapse, learned counsel for the Respondents could not indicate from the record any averments made by the Respondent to the effect that she was in possession of the premises prior to the premises becoming

a public premises owned by the Petitioner Bank.

5. In the above view in the absence of material facts on record to support the factual contention on the part of the Respondent, decision of the Apex Court in Dr. Suhas H. Pophale (Supra.) would have no application. In the present facts, there is nothing to indicate on record that the Respondents were in possession of the earlier/old premises prior to the same becoming a public premises. Thus there is no merit in the aforesaid preliminary objection raised by the Respondents. Thus rejected.

6. Mr. Mishra, learned counsel appearing for the Petitioner challenges the impugned order dated 8th May, 2013 only on the ground that it holds that the Petitioner had not proved a bonafide requirement for the said premises. It is submitted that the notice dated 25th November, 2009 issued for evicting the Respondents did indicate the bonafide requirement of the premises on the part of the Petitioner. The aforesaid requirement of bonafide requirement was supported by affidavit of examination-in-chief of the Petitioner indicating need of transit house/accommodation in Mumbai. In spite of the Petitioner making out a case, the impugned order dated 8th May, 2013 holds that the Petitioner has not been able to prove its bonafide requirement for the subject premises.

7. The aforesaid submissions have to be tested in the context of the findings of the impugned order dated 8th May, 2013. The impugned order holds as under:

“28. In view of the aforesaid rulings, it can hardly be said that from the evidence of the officer of the bank, who has deposed that the requirement of the bank is to house 4 of their officers while on board meeting, for cutting costs does not seem to be a very plausible requirement especially in the back-drop of the eviction application which spells out the requirement of the bank is for commercial expansion.

29. Especially in the given circumstances, it appears that the bank is not certain regarding the purpose of its requirement i.e. commercial or residential, coupled with the fact that the present premises is a commercial premises and the requirement of the bank being for residential purpose, I am of the view that the bonafide requirement of the bank is not proved in the present case.

*30. As held in the ruling of the Hon'ble Supreme Court in the case of Dwarkadas Mafatia (supra) the least that is expected from the public authority is to be guided by public interest and informed by reason and they cannot act like private landlords. In the present case, the respondent/ bank has apparently acted like a private landlord and quite unreasonably so. I therefore hold that respondents have failed to prove their bonafide requirement of the concerned premises. I therefore **answer point no.1 in the Negative.**”*

The notice issued under section 4 of the Act specifically states that the premises are required for the rapid expansion of clients' business and

facing an acute shortage of place for their use and occupation. The affidavit of Mr. S.V.Kamath filed in support of eviction notice by the petitioner, inter alia, in paragraph 1 records the fact that there are 65 officers of the bank who are in the waiting list awaiting allotment of residential accommodation within Mumbai Region. Thereafter paragraph 2 thereof states that accommodation/ rooms which are required for accommodation by the Bank so as to accommodate the people from out-station when they come to Mumbai. It was on the aforesaid context that the impugned order of the trial court holds that the Petitioner are not certain about the purpose of requirement whether commercial or residential. Coupled with the fact that the premises is commercial in nature and the affidavit filed indicates that the requirement, inter alia, is for the residential purpose.

8. Mr. Mishra, learned counsel appearing for the Petitioner placed reliance upon the decision of **Satyawati Sharma (Dead) by LRs. Vs. Union of India & Another [2008(5) SCC 287]** to contend that there is no difference between the residential premises and the commercial premises, so far as the bonafide need / requirement is concerned. The distinction between the two according to him is illusionary and once bonafide requirement is proved, then whether for residential or

commercial, is of no consequence. The aforesaid decision was rendered in the context of challenge to the constitutionality of Section 14(1) (e) Delhi Control Rent Act, 1958 which permitted the landlord to initiate eviction proceeding only if the premises were let for residential purposes and not for commercial purposes. In that context, the Court held that section 14 (1) (e) of the Eviction Act is discriminatory to the extent it does not apply to the commercial premises. The aforesaid decision would have no application to the present facts. The issue arising here is whether the Petitioner has been able to establish the bonafide requirement of the said premises. This bonafide requirement is in context of requiring the premises for residential or commercial purposes. In fact the need for the premises for residential or commercial purpose would be the foundation of its case for bonafide requirement. It is only in that context could one examine the plea of bonafide requirement. In this case the petitioner himself is not certain in view of contradictory stand, the basis of the requirements, thus no fault can be found with the impugned order dated 8th May, 2013.

9. In the above view, the view taken by the impugned order dated 8th May, 2013 is a reasonable view on the basis of the facts and the evidences before it. Thus it would not warrant exercise of my

supervisory jurisdiction under Article 227 of the Constitution of India.

10. Accordingly, the writ petition is dismissed. No orders as to costs.

(M. S. SANKLECHA,J.)