

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7246 OF 2013

Fabrigem Creations Pvt. Ltd., .. Petitioner.
v/s.
Development Commissioner, SEEPZ
& Another .. Respondents.

Mr. Mayur Khandeparkar with Mr. T. N. Tripathi and Ms. Sapna Rachure
i/b. T. N. Tripathi & Co., for the Petitioner.
Mr. Advait M. Sethna with Ms. R. R. Thakkar and Ms. A. Jhaveri, for the
Respondents.

CORAM: M.S.SANKLECHA, J.
DATE : 21st AUGUST, 2017.

P.C:-

The Petition was itself taken up for final disposal at the stage
of admission.

2 This Petition under Article 227 of the Constitution of India,
challenges the order dated 22nd July, 2013 passed under Section 9 of the
Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (the Act)
by the Principal Judge, City Civil Court, Mumbai. By the impugned order
dated 22nd July, 2013, the Petitioner's appeal from the order dated 4th
April, 2013 of the Estate Officer (Respondent No.2) of Development
Commissioner, i.e. SEEPZ-SEZ Authority (Respondent No.1) passed under
Section 5(1) of the Act, was dismissed.

3 On 24th December, 1999, Petitioner had taken on lease, the
premises bearing Unit No. G-34 in Jems & Jewellery (suit premises) from

the Respondent No.1. On 28th November, 2008, Respondent No.2 issued a show cause notice to the Petitioner, seeking to evict it from unauthorized occupation of the suit premises. By an ex-parte order dated 15th February, 2010, under Section 5(1) of the Act, the Petitioner was evicted from the suit premises. Being aggrieved, Petitioner filed an appeal under Section 9 of the Act, to the Principal Judge, City Civil Court. The appeal was dismissed by an order dated 9th November, 2012 by the Principal Judge, City Civil Court.

4 Being aggrieved, the Petitioner challenged the order dated 9th November, 2012 in this Court being Writ Petition No.5060 of 2011. By an order dated 16th October, 2012. This Court set aside the order of the Estate Officer dated 15th February, 2010 as well as the appellate order dated 9th November, 2011 on the ground that principles of natural justice had not been followed inasmuch as a reasonable opportunity of hearing was not given to the Petitioner while passing ex-parte order dated 15th February, 2010. Thus, the Court restored the issue to Respondent No.2 to decide afresh after following the principles of natural justice. Besides, in view of the suit premises being locked, the service of notice to the Petitioner's Advocate was to be considered sufficient for the consequent proceedings.

5 Consequent to the order dated 16th October, 2012 of this Court, on 29th October, 2010, the Petitioner called upon Respondent No.1 to remove the lock put on the suit premises consequent to the order dated 15th February, 2010. This demand was made in view of the fact that this Court had by an order dated 16th October, 2012, set aside the order of eviction. Thus, the prayer that status-quo ante be restored. The above

communication dated 29th October, 2010 was ignored by the Estate Officer.

6 Thereafter, on 24th January, 2013, the Estate Officer issued a fresh show cause notice to the Petitioner under Section 4(1) of the Act, seeking to evict the Petitioner from the suit premises. This, inter alia, on the ground that Petitioner was in unauthorized occupation of the suit premises.

7 In response, Petitioner filed an application for restitution i.e. restoring the suit premises to the Petitioner, as the order of eviction dated 15th February, 2010 had been set aside. This, by invoking the principle of Section 144 of the Civil Procedure Code. Besides, a further letter also dated 14th February, 2013, was filed by the Petitioner in reply to the show cause notice dated 24th January, 2013, pointing out that the relevant documents which would be necessary for its defence to the show cause notice were in the suit premises which was sealed by the Respondents. Therefore, access to the records in the suit premises for inspection of the record, papers and documents be made available. In the absence of the same, it is submitted that it would be handicapped in giving response/reply to the show cause notice. The Petitioner was heard on 18th February, 2013 and the Petitioner's application for restitution, was rejected by an order dated 4th April, 2013. Thus, the show cause notice dated 24th January, 2013 was confirmed, evicting the Petitioner from the premises under Section 5(1) of the Act within 15 days from the date of order of dated 4th April, 2013.

8 Being aggrieved, the Petitioner filed an appeal to the Principal Judge, City Civil Court, Bombay. By an order dated 22nd July,

2013, the Principal Judge, City Civil Court, Bombay dismissed the Petitioner's appeal leading to this Petition. The Petitioner's grievance of not having access to its papers and proceedings so as to meet the show cause notice dated 24th January, 2013, was rejected on the ground that no effort was made by the Petitioner to seek restitution of the suit premises immediately after the order dated 16th October, 2012, was passed. Further, it holds that the Petitioner was unable to point out exactly the record and proceedings which the Petitioner wants so as to meet the case of the Respondent. In these circumstances, the grievance of the Petitioner was not entertained.

9 Mr.Khandeparkar, learned Counsel appearing for the Petitioner submits that the impugned order has been passed in breach of principal of natural justice. The grievance of the Petitioner is that after the order dated 16th October, 2012, the Respondent was obliged to restore the possession of the suit premises to the Petitioner. This restoring the status-quo as existing prior to passing of the order dated 15th February, 2010 was necessary. This is so as, the order dated 15th February, 2010, had been set aside. Further, the Petitioner was unable to respond on the merits to the show cause notice as all the relevant material and documents which may have an answer to the allegation in the show cause notice, are in the custody of the Respondent as the suit premises are under their lock and key. It is also submitted that at this stage, it is not possible for the Petitioner to indicate exactly the documents on which it seeks to rely. It is only on examination of all the documents, would the Petitioner be able to know if they have an defense to the impugned order.

10 On the other hand, Mr. Sethna, learned Counsel appearing

for the Respondents submit that the order of this Court dated 16th October, 2012 while setting aside the order dated 15th February, 2010 did not disturb the Respondent's possession with regard to the suit premises. This is evident from the fact that the Respondent was allowed to serve the show cause notice upon the Petitioner's Advocate and this was considered service upon the Petitioner. In the above view, there was no occasion for the impugned order to deal with the restitution application. In any event, the restitution application he submits, has been dealt with by the order dated 4th April, 2013 inasmuch as there is a reference made to the same. Further, it is submitted that the premises under the SEEPZ is made available only to exporter and the Petitioner has closed his business since 31st December, 2009. Therefore, the continuation of the occupation of the suit premises, is without authority of law. Consequently, the order of eviction should not be disturbed.

11 The Petitioner had challenged the earlier order dated 8th October, 2010 of eviction passed by the Estate Officer under Section 5 of the Act as upheld by order dated 9th November, 2011 of the Principal Judge, City Civil Court, Bombay, in this Court by filing Writ Petition No.1056 of 2011. This Court by an order dated 16th October, 2012 set aside the orders dated 8th February, 2010 of the Estate Officer and the order dated 9th November, 2011 passed in appeal by the Principle Judge, City Civil Court, Bombay. This essentially on the ground that principle of natural justice had not been followed as fair and reasonable opportunity of being heard was not given. In the above view, Petition was restored to the Estate Officer for fresh consideration. In view of the fact that the Petitioner's premises was sealed/ locked, notice was to be served upon the Advocate appearing for the Petitioner in the Petition and the same would

be treated as due compliance of giving a notice to the Petitioner. On receipt of the show cause notice dated 24th January, 2013, the Petitioner filed an application for restitution of suit premises consequent to the order dated 16th October, 2012 of the High Court. The Estate Officer by an order dated 4th April, 2013, rejected the Petitioner's contention with regard to restitution by, inter alia, holding that there are no directions from the High Court to restore the possession of the suit premises of the Petitioner. The order of this Court dated 16th October, 2012, in fact, did not disturb the order of the Appellate Authority, rejecting the de-sealing of the premises as it evident from the fact that it was clarified that notice of hearing to the Petitioner shall be served upon its Advocate. This was in the context of the suit premises being locked. Moreover, the suit premises have not been in Petitioner's possession for over a period of 6 years and, therefore, there is no reason at this stage, to disturb the same. However, in case, the Petitioner does succeed in establishing before the Estate Officer that it continues to legally occupy the suit premises then the premises would be restored to the Petitioner. At this stage, no issue of restitution arises.

12 Further, on 14th February, 2013 itself, the Petitioner also filed its reply to the notice, pointing out that as the premises has been sealed, papers and documents which may be relevant for their defence to the notice are in the sealed premises. Therefore, in the absence of those documents being available for examination, it may not be possible to effectively respond to the show cause notice. In spite of the above, the order dated 4th April, 2013 holds that at the personal hearing fixed on 18th February, 2013, the Petitioner only sought an adjournment. In appeal, the Appellate Authority negates the grievance of the Petitioner that in the

absence of access to documents in possession of the Respondent, it is unable to meet the show cause notice, was negated on the ground that the Petitioner is unable to specify the documents required so as to present its reply/ defence to the show cause notice. This to my mind, in the peculiar fact of this case, would not meet the principles of natural justice. The documents in the Petitioner's premises would need to be examined by the Petitioner so as to make out their case to meet the show cause notice, particularly bearing in mind the Petitioner had been occupying this premises since 1999. It is likely that even after the Petitioner has been given access to the documents in the suit premises for examining the documents, it may not be able to meet the notice issued by the Respondents. Nevertheless, no party should feel that he was unable to put-forth his best case because he was being denied access to its own documents. This non-refusal of access to its own documents to file a reply to the show cause notice certainly handicaps a party in putting forth its best case. Therefore, non-giving of access to the Petitioner of its own documents, is likely to cause prejudice to the Petitioner. In the above facts, giving of access of the documents to the Petitioner, is not an empty formality.

13 In the above view, the impugned orders dated 15th February, 2010 and 9th November, 2011 passed by the Estate Officer and the Appellate Authority are quashed and set aside. The proceedings are restored to the Estate Officer to continue the same from the issuance of the show cause notice dated 24th January, 2013. This after having given access to the documents of the Petitioner in the sealed premises. In fact, the Petitioner would approach the Respondent No.2 within two weeks from today so as to fix a time convenient to the Respondent to enable the

Petitioner to have an access to the sealed/ locked premises and remove all their documents/records from the suit premises. It is made clear that the aforesaid exercise should be completed within thirty days from today. The Petitioner to file its reply on merits to the show cause notice dated 24th January, 2013 within 21 days of the date when access was given to the documents for removal of its records and documents from the sealed premises. The parties are directed to adhere to the above time schedule as this is an old matter and the suit premises continue to be unused. Thereafter, the Respondent No.2 shall hear the Petitioner and dispose of the show cause notice, in accordance with law.

14 **Petition** stands **disposed of** with the above directions. No order as to costs.

(M.S.SANKLECHA,J.)