

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10942 OF 2016

Zameer Mukhtar Manekia

..Petitioner

Versus

The Estate Officer and others

..Respondents

Mr. Abhishek Pungalia for the Petitioner.

**Mr. Ajai Fernandes a/w Ms. Sneha Pandey i/by Motiwalla & Co., for
the Respondent No.2.**

CORAM : R. M. SAVANT, J.

DATE : 12th JANUARY, 2017

PC.

1 The writ jurisdiction of this Court is invoked against the order dated 09.06.2016 passed by the Estate Officer rejecting the application filed by the Petitioner for being joined to the eviction proceedings in question as the heir of one of the original occupants i.e. one Sultan F. Manekia.

2 The Respondent No.2 herein after following the gamut of issuance of notice under Section 4(2)(b)(ii) and Section 7(3) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (For short "the PPE Act") has commenced proceedings under the said PPE Act against the six persons, out of which the names of five persons are appearing as Respondent Nos.3 to 7 herein. In so far as the 6th person is

concerned, he was one Sultan F. Manekia, through whom the Petitioner claims being his grandson. It seems that son of the said Sultan F. Manekia has predeceased him. The premises in question were jointly occupied by the said six persons. The eviction proceedings have commenced sometime in the year 2015. It seems that the Petitioner filed the instant application in January 2016 after the death of the said Sultan F. Manekia for being joined as a party to the said proceedings.

3 Suffice it would be to state that the said application filed by the Petitioner was opposed on behalf of the Respondent No.2 on the ground that the tenancy in question was a joint tenancy and therefore would devolve by survivorship on the other joint tenants and therefore the Petitioner could not be joined as a party to the said proceedings. The Estate Officer considered the said application and in so far as the contention raised on behalf of the Respondent No.2 MPT is concerned, the Estate Officer observed that the said contention is having “some base”. The Estate Officer however found fault with the joint tenants having not approached the MPT to sign the document of lease agreement as tenancy in common well in advance during the course of tenancy. The Estate Officer has also observed that the lease document available on record shows a joint tenancy and always a single rent receipt was issued for rent of a plot. The Estate Officer therefore by the impugned order

dated 09.06.2016 rejected the said application.

4 The Learned Counsel for the parties i.e. Mr. Abhishek Pungalia for the Petitioner and Mr. Ajai Fernandes for the Respondent No.2 would make submissions for and against the Petitioner being joined as a party to the eviction proceedings.

5 In my view, having regard to the fact that a joint notice under the PPE Act has been issued to all the six occupants of the structure in question as being unauthorized occupants, the matter was required to be addressed by the Estate Officer from the said angle. Hence by issuing the said notice, the eviction of all the six occupants has been sought by the MPT by taking recourse of the provisions of the PPE Act. The Petitioner may have some right as a heir of one of the original occupants i.e. Sultan F. Manekia however the effect of the impugned order would be that he would be divested of any right that he would be having as a heir. It seems that part of the premises are also in possession of the Petitioner which part was in occupation of the said Sultan F. Manekia. In so far as the six persons who are tenants are concerned, they have a commonality of interest qua the MPT. However by rejection of the application filed by the Petitioner unnecessary complications would be created in the rights interse between the tenants. Hence, in my view, the impugned order

dated 09.06.2016 is required to be quashed and set aside and accordingly quashed and set aside. The application filed by the Petitioner would accordingly stand allowed. The Petitioner would be entitled to come on record in place of the said Sultan F. Manekia in the said eviction proceedings. The amendment to the said proceedings would be carried out within one week from date.

6 However, it is clarified that the joining of the Petitioner to the said proceedings would be without prejudice to the rights and contentions of the MPT in so far its case before the Estate Officer of the tenancy being a joint tenancy is concerned. It is clarified further that this Court has not expressed any opinion in that regard. The Writ Petition is accordingly disposed of.

7 The Learned Counsel Mr. Abhishek Pungalia waives notice of the proceedings before the Estate Officer and states that the Petitioner would voluntarily appear before the Estate Officer on the next date.

[R.M.SAVANT, J]