

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

WRIT PETITION NO. 956 OF 2017

Union of India	]	
Through the Deputy Salt Commissioner	]	
Having his office at	]	
4 th floor, Exchange Building,	]	
Sir Shivsagar Ramgulam Marg,	]	
Ballard Estate, Fort,	]	
Mumbai - 400 001.	]	<u>... Petitioner.</u>

Versus

Laxman Yadneshwar Sathe	]	
Age : 66 years, Occ.: Agriculture & Business,	]	
R/o. 13, Adarsh Co-operative housing Society,	]	
Opp. State Bank of India,	]	
Gokhale Road, Naupada,	]	<u>... Respondent.</u>
Thane - 400 602.	]	

- Mr.S.R.Rajguru a/w. Mr.Ashish Mehta, Mr.Ojas Gole and Ms.Dhruvi Shah for the Petitioner.
- Mr.Sanjiv A. Sawant for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 17th APRIL, 2018.

PRONOUNCED ON : 24th APRIL, 2018.

JUDGMENT :

1] Rule. Rule is made returnable forthwith, Heard finally, at the stage of admission itself, by consent of Mr.Rajguru, learned

Counsel for the Petitioner and Mr.Sanjiv Sawant, learned counsel for the Respondent.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioner is challenging the order dated 2nd April 2016 passed by the Jt. Civil Judge, Senior Division, Alibag, below the “Preliminary Issue” in Regular Civil Suit No. 221 of 2013.

3] The facts of the Writ Petition are to the effect that, Respondent, herein, has filed a suit before the Trial Court for declaration that he is the owner of the suit property described in paragraph No.1 of the plaint and Defendant No.2-The State of Maharashtra be directed to record the suit property in the name of the Petitioner in revenue records and accordingly, 7/12 extracts of the suit property be issued in his name. A consequential relief of injunction was also sought restraining Defendant No.1-The Union of India from disturbing his possession in the suit property without following due process of law. The relevant relief which was sought in the plaint was of the declaration, that, notice dated 24th May 2013 issued by Defendant No.1(b)-The Deputy Salt Commissioner, be declared as illegal, arbitrary, without authority and same may be quashed and set-aside; accordingly, Defendant No.1 be restrained from continuing the enquiry started under the provisions of The Public

Premises (Eviction of Unauthorised Occupants) Act, 1971
(*hereinafter referred to as "the Public Premises Act"*).

4] As per the case of the Respondent, he is carrying on business of salt manufacturing on his own land, under 49 salt pans (or 98 tukdas). Those rights over the salt pans on the land bearing Survey No.17/2 situated at village Wadkhal, Taluka Pen, District Raigad, had been purchased by his predecessor in title Shri Shamdas Teomal Chainani and Shri Teomal L. Chainani from the Government of India through public auction during the year 1957-58 for the purchase price of Rs.31,000/- (Rs.Thirty One Thousand only). The Government of India has accordingly issued "Sale Certificate" of the said land in the name of the Respondent's predecessor in title Shri Shamdas Teomal Chainani and Shri Teomal L. Chainani. After the death of Shri Teomal L. Chainani, Shri Shamdas Teomal Chainani inherited all the rights over the suit property. Shri Shamdas Teomal Chainani then relinquished all his rights in the property in favour of Shri Waman Anant Prabhudesai (5/6th share) and the present Respondent - Laxman Yadneshwar Sathe (1/6th share). After the death of Shri Waman Anant Prabhudesai, his legal heirs have relinquished all their rights in the suit property in favour of the Respondent. Thus, he has acquired the possession of the suit property in absolute ownership

from his predecessors in title by way of relinquishment deed executed before the Tahsildar, Pen. The relinquishment deed however could not be registered as the Salt Department has stopped maintaining the Jaminkharda Register or Land Register.

5] According to the Respondent, therefore, the notice bearing No.S-11011(42)Salt/2013/2652 dated 24th May 2013 issued by Petitioner-The Deputy Salt Commissioner, under Section 4 of the Public Premises Act, 1971, cannot be called as legal and valid having regard to his possession in the suit property as lawful owner thereof. The Respondent therefore sought the above said reliefs restraining mainly the Petitioner from taking any action in pursuance of the said notice, namely, continuance of the enquiry under the provisions of the Public Premises Act and also for declaring him as owner of the suit property and for that purpose entering his name in the revenue record as owner of the said property.

6] On appearance, the Petitioner, herein, not only resisted the suit by filing written statement but also by raising a specific "Preliminary Issue" relating to the jurisdiction of the Civil Court to entertain the suit of the present nature, contending *inter-alia* that the relief claimed by the Respondent of directing Defendant No.2-The State of Maharashtra to record his name in the revenue record and to

issue 7/12 extract in his name was expressly barred in view of Section 4(d) of the Bombay Revenue Jurisdiction Act, 1876 and as regards the remaining reliefs, the suit is barred in view of Sections 8, 9 and 10 of the Public Premises Act.

7] The Trial Court has, accordingly, framed the “Preliminary Issue” relating to its jurisdiction to entertain the suit, in view of the provisions of the Bombay Revenue Jurisdiction Act, 1876 and the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

8] In support of his case, Respondent examined himself; whereas Petitioner did not led any oral evidence on record.

9] On appreciation of this evidence and in the light of the submissions advanced before it, the Trial Court was pleased to hold that, as regards the relief claimed by the Respondent for direction to Defendant No.2-the State of Maharashtra for recording his name in the 7/12 extract in the revenue record as owner of the suit property, such relief being expressly barred under Section 4(d) of the Bombay Revenue Jurisdiction Act, the suit cannot be entertained to that effect. However, it was held by the trial Court that, as regards the remaining reliefs relating to notice issued and the enquiry initiated under the provisions of the Public Premises Act, the jurisdiction of the Civil

Court is not barred. It was held by the Trial Court that, as the issue raised in the present suit was pertaining to the ownership and title of the Respondent over the suit property, such issue of title and ownership can be decided by the Civil Court. In arriving at this conclusion, the Trial Court has mainly relied upon the judgment of the Hon'ble Apex Court in the case of *Government of Andhra Pradesh V/s. Thummala Krishna Rao and Another*¹. Accordingly, the Trial Court held that, the Civil Court has jurisdiction to entertain the suit in respect of the title and ownership of the suit property, including the challenge to the notice issued under the provisions of the Public Premises Act.

10] This order of the Trial Court is the subject matter of the present Writ Petition. As regards the finding of the Trial Court that, it has no jurisdiction to grant the relief, as claimed by the Respondent, of direction to the Defendant No.2-the State of Maharashtra to enter the name of the Respondent in the revenue record as owner of the suit property, it being barred under Section 4(d) of the Bombay Revenue Jurisdiction Act, the Respondent-Plaintiff has not challenged the said finding and hence, it has become final. Even otherwise also, the provisions of Section 4(d) of the Bombay Revenue Jurisdiction Act

1 AIR 1982 SC 1081

show that, they contain an express bar, by laying down that no Civil Court shall exercise jurisdiction as to the claims against the Government; (1) to be entered in the revenue-survey or settlement-records or village-papers as liable for the land-revenue, or as superior holder, inferior holder, occupant or tenant, or (2) to have any entry made in any record of a revenue-survey or settlement or (3) to have any such entry either omitted or amended. Therefore, in respect of this finding of the Trial Court, there is no reason to interfere in any way.

11] Hence, the real issue for consideration is whether the jurisdiction of the Civil Court is barred to entertain the suit, in view of the provisions of the Public Premises Act; especially, when the challenge is raised to the notice issued by the Estate Officer under Section 4 of the said Act. Undisputedly, the impugned notice is issued under Section 4 of the Public Premises Act for eviction of the Respondent. Relief claimed by the Respondent is two fold: to declare this notice as illegal and arbitrary and further to restrain the Petitioner from continuing the enquiry initiated on this notice under the Provisions of the Public Premises Act.

12] In order to appreciate the legal matrix involved in this issue, it would be useful to refer to the relevant provisions of the

Public Premises Act.

13] The Public Premises Act was enacted for providing swift, effective and speedy remedy for eviction of unauthorised occupants from the public premises. Section 2(c) of the Act defines the “premises” to mean any land or any building or part of a building and includes, the garden, grounds and outhouses, if any, appertaining to such building or part of a building, and any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof. In the present case, therefore, a vague plea raised by learned counsel for the Respondent that the suit property being a land cannot fall in the definition of “premises”, has to be rejected.

14] The term “public premises” is defined in Section 2(e) of the Public Premises Act. For the purpose of this Writ Petition, Clause (1) of the said sub-section is relevant. It provides that, “Public Premises means any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1980), under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of

that Secretariat”.

15] In the presence case, admittedly, the land belongs to Petitioner – Union of India. Learned counsel for the Petitioner has also in this respect relied upon the judgment of the Hon'ble Apex Court in the case of *R.Hanumaiah and Another V/s. Secretary to Government of Karnataka, Revenue Department and Others*². The west lands are presumed to be Government lands. The rights, entitlement of presumptions or title thereon lie in favour of the Government in respect of these lands, distinguished from those of the private parties. Though, learned counsel for the Respondent has relied upon the 'Sale Certificate' of the said land, it clearly goes to show that the 'Sale Certificate' was only in respect of the salt pans and not in respect of the land below it.

16] Section 2(g) of the Public Premises Act, gives the definition of “unauthorised occupation”, in relation to any public premises, as the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises, has expired or has been determined for any

2 (2010) 5 SCC 203

reason whatsoever.

17] Section 5 of the Public Premises Act, then provides for eviction of unauthorised occupants, after issuance of show cause notice as per Section 4 of the Act Section 8(1) of the Act deals with the powers of estate officer for eviction of such unauthorised occupants.

18] Section 10 of the Public Premises Act, which is material for our purposes gives finality to the every order passed by the estate officer or appellate officer under this Act, further providing that such order 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 in pursuance of any power conferred by or under this Act.

19] Section 15 of the Public Premises Act further lays down an express bar to the jurisdiction of the Civil Court to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or any other reliefs of the demolition or removal of the building granted by the Estate Officer under the Act.

20] The short resume of the provisions of the Public Premises Act therefore make it abundantly clear that the jurisdiction of the Civil

Court stands expressly excluded and barred in respect of any action which is taken by the Estate Officer under the Act. As a matter of fact, Section 10 of the Public Premises Act gives finality to the orders of the Estate Officers making it clear that they cannot be questioned in any suit. It also restrains the Court from passing any order of injunction in respect of “any action” taken by the Estate Officer under this Act. The term “any action” necessarily includes the action of issuance of notice under Section 4 of the Public Premises Act as it is an action taken in pursuance of the powers conferred by the Public Premises Act on the Estate Officer. Hence, the jurisdiction of the Civil Court is thus expressly barred to entertain any grievance in respect of the said action or to grant any injunction to the Estate Officer from pursuing with the said action.

21] In the present case, the Respondent is claiming this very relief of restraining the Petitioner-Union of India from continuing this enquiry under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, and also for declaration that the notice issued under Section 4 of the Act is illegal and not binding. Thus, the very reliefs claimed by the Respondent in the suit expressly stand excluded from the jurisdiction of the Civil Court, in view of the provisions of Section 10 of the Act.

22] As a matter of fact, the Trial Court has not adverted to this legal position. However, the only ground on which the Trial Court has held that the Civil Court can entertain such suit is because Respondent has in this case raised the dispute relating to title or ownership of the Respondent over the suit property. According to the trial Court, Civil Court is competent and has the jurisdiction to decide the issue of ownership and title and hence, the Civil Court has jurisdiction to entertain this suit. In arriving at this conclusion, the Trial Court has relied upon the judgment of the Hon'ble Apex Court in the case of *Government of Andhra Pradesh V/s. Thummala Krishna Rao (supra)*.

23] However, unfortunately, it was not brought to the notice of the trial Court that this judgment of the Hon'ble Apex Court is distinguished by the Division Bench of this Court in the case of *Kaikhosrou (Chick) Kavasji Framji & Anr. V/s. Union of India & Anr.*³, wherein the Division Bench of this Court has after taking the resume of the provisions of the Public Premises Act and the background in which said Act was enacted, has categorically held that, the Public Premises Act provides complete due machinery answering the test of due course of law. Hence, once the proceedings are initiated, the

3 2009(5) Bom. C.R. 200

Estate Officer has to satisfy that the facts giving rise to its jurisdiction have been established. Therefore, the Estate Officer can very much, if required, even decide, as to, whether it is necessary for him to determine ownership or title to premises. In this reported judgment also, though a contention was raised that the questions involved are pertaining to serious dispute of title and they cannot be resolved by the Estate Officer and for that purpose, the reliance was placed on this judgment of the Apex Court in the case of *Government of Andhra Pradesh V/s. Thummala Krishna Rao (supra)*, the Division Bench of this Court has distinguished the same, by holding that the said judgment pertains to the A.P. Land Encroachment Act, 1905, according to which, there was no bar to file Civil Suit to remove encroachment from the Government land. It was held in paragraph No.55 and 56 of the judgment by the Division Bench of this Court as follows:

“55. The learned senior Counsel for the petitioners has also placed reliance on the judgment of the Apex Court in the case of Government of Andhra Pradesh vs. Thannala Krishna Rao reported in (1982) 2 SCC 134 wherein the Apex Court while dealing with the Tenancy and Land Laws in general and A.P. Land Encroachment Act, 1905 (AP Act 3 of 1905), observed that summary proceedings can be initiated only where unauthorized occupation of Government

property is not disputed, but where title to the said land is bona fide disputed by the occupant, such dispute must be adjudicated not by the summary proceedings but by civil suit. Bona fides of the occupant's claim can be inferred from his occupation for a long period. So far as the law laid down by the Apex Court in the said judgment is concerned, is the settled principle of law, with which no dispute could be raised. In that judgment, the Apex Court was mainly concerned with the provisions of the A.P. Land Encroachment Act, 1905 dealing with the removal of encroachment on the Government properties. In that judgment, the Apex Court observed that the respondents had a bona fide claim to litigate and they could not be evicted save and except by the due process of law. The summary remedy prescribed by [Section 6](#) of the said Act was not the kind of legal process suited to an adjudication of complicated questions of title. The procedure prescribed, therefore, was held not answering the requirement of the due course of law meant for evicting the respondents.

56. What is meant by due course of law? The due course of law in each particular case means an exercise of the powers by duly constituted Tribunal or Court in accordance with the procedure established by law providing for adequate safeguards to protect individual rights. A course of legal proceedings according to the rules and principles which have been established to our system of jurisprudence for the enforcement and protection of private rights. To give such proceedings any validity, there must thus be a

Tribunal competent by its constitution, that is by law of its creation, to pass upon the subject matter of the suit or proceeding; and, if that involves merely a determination of the personal liability of the defendant, it must be brought within its jurisdiction by service of process within the State, or his voluntary appearance. Due course of law implies the right of the person affected thereby to be present before the Tribunal which pronounces judgment upon the question of life, liberty or property in its most comprehensive sense; to be heard, by testimony or otherwise and to have the right determination of the controversy by proof, every material fact which bears on the question of fact of liability be conclusively proved or presumed against him. This is the meaning of due course of law in a comprehensive sense."

(emphasis supplied)

24] By holding that the Public Premises Act provides a complete due machinery, answering the test of due course of law, whereas against it, no comprehensive provisions are to be found in A.P. Land Encroachment Act, 1905, and as there was no bar to file suit in the Civil Court under the said Act, it was held that the judgment of the Hon'ble Apex Court cannot be made applicable to the proceedings initiated under the Public Premises Act. It was held that, it is not necessary to the party to first go to the Civil Court to seek declaration to the title and thereafter to resort to the provisions of Public

Premises Act.

25] In paragraph No.66 of the judgment, the Division Bench (supra), was further pleased to hold as follows:

“66. The Estate Officer will be well within its jurisdiction to first consider whether or not the subject premises would fall within the expression "public premises". He will have to consider whether could it be legitimately held that the Government has an absolute right of user of the premises in question. If this is so, then the premises can properly be said to "belong to" the government. Since we have already observed that the expression "belonging to" does not merely include the right of ownership but also something less than that and since further the premises of which the absolute right of user vests in a person can be said to belong to him. He will have to consider whether or not the present premises will squarely be embraced by the definition of "public premises" within the meaning of the said Act. It is not necessary for Estate Officer to determine ownership or title to the premises.”

26] In my considered opinion, this judgment of the Division Bench of this Court is a complete answer to the finding recorded by the Trial Court that as the dispute involved is pertaining to the ownership and title of the suit property, the jurisdiction of the Civil Court is not barred.

27] As a matter of fact, the entire scheme of the Public Premises Act contains a clear bar to the jurisdiction of the Civil Court to entertain any suit pertaining to the steps taken under the said Act. Respondent is trying to give go by to that scheme by raising the dispute of title and ownership over the suit property, which should not have been permitted by the Trial Court. Otherwise in each and every such action taken by the Estate Officer, if Civil Court keeps on entertaining the suit on mere raising of dispute relating to title and proceed to grant the relief of injunction, as claimed in this suit, restraining the Estate Officer from proceeding with the enquiry, the very object of the Public Premises Act would be frustrated.

28] Here, in the case, Estate Officer has already issued the notice to the Respondent under Section 4 of the said Act and therefore, in view of the bar created under Section 10 of the Public Premises Act, the Respondent cannot challenge the said proceedings in the Civil Court so as to override the provisions of the Public Premises Act; especially, in the present case, wherein except for the "Sale Certificate" which is issued in the name of the predecessor in title of the Respondent and that too pertaining to salt pans and not of the land below it, the Respondent has not produced any document to show that either his predecessors in title have relinquished their

rights in the said land or he has received these right by virtue of legal document. In these facts of the case, the Estate Officer will be the most competent person to decide whether premises 'belong' to Government or otherwise. He alone is having the jurisdiction, as the jurisdiction of the Civil Court is expressly barred, in view of Section 10 of the Public Premises Act to challenge the notice issued under the said Act.

29] Though, the submission of learned counsel for the Respondent is that, Respondent is also the owner of the land below the salt pans, in my considered opinion, such submission cannot be accepted unless there is some document of title to prove the said fact. As held by the Hon'ble Apex Court therefore in the case of *R.Hanumaiah and Another V/s. Secretary to Government of Karnataka, Revenue Department and Others (supra)*, the west lands are presumed to be the Government lands. Rights, entitlement and presumptions of title lie in favour of the Government, distinguished from those of private parties. As held by this Court also, way back in the year 1941, in the case of *The Secretary of State for India in Council V/s. Chimanlal, Jamnadas and Others*⁴, the Government is presumed to be the owner in case of lands which are not proved to be of a private party.

4 (1942) Indian Law Reports 358

30] Even otherwise also, the Respondent is entitled and is at liberty to show before the Estate Officer that he is the owner of the said land; they do not “belong” to the Government and hence they do not fall within the definition of “Public Premises”, as contemplated under the said Act. The Estate Officer, as held by the Division Bench of this Court, referred above, is competent to decide the said issue. Thus, in view of the bar laid down in Section 10 of the Public Premises Act, the fact remains that the Civil Court cannot entertain the suit to challenge the notice issued by the Estate Officer under Section 4 of the Act or restrain the Estate Officer from continuing with the enquiry.

31] The Writ Petition is therefore allowed. The impugned order passed by the Trial Court holding that the Civil Court has jurisdiction to entertain the suit in respect of the reliefs claimed under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, or claiming to be the owner of the suit property, is quashed and set-aside.

32] Thus, as it is held that the Civil Court has no jurisdiction to entertain the suit, the plaint stands rejected.

33] Rule made absolute in above terms.