

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1631 OF 2018

Shri Prashant Vinodkumar Bansal,]
Age : 43 Years, Occ.: Business / Agriculturist,]
Residing at A-2/13, Agrasen Society,]
Koregaon Park, Pune - 411 001.] Petitioner

Versus

1. The Estate Officer,]
Air Force Station, Lohgaon,]
Pune - 411 032.]
2. Shri Arun Krishna Jadhav,]
Age : 59 Years, Occ. Agriculturist,]
Residing at S.No.17/2A/1,]
Harinagar Ramwadi,]
Near Jakat Naka (Octroi),]
Pune - 411 014.]
3. Shri Bhupendra Kewalchand Jain,]
Age : 45 Years, Occ. Business,]
Residing at 1/1, Salunkhe Vihar,]
Kondhva, Pune - 411 048.] Respondents

Mr. Girish Godbole, Senior Counsel, i/by Mr. Sumit Kothari, for the
Petitioner.

Mr. Suresh Kumar, a/w. Mr. Dhanesh R. Shah, for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 22ND FEBRUARY 2018.

PRONOUNCED ON : 1ST MARCH 2018.

JUDGMENT :

1. Rule. Rule is made returnable forthwith. Heard finally, at the stage of admission itself, by consent of Mr. Girish Godbole, learned Senior Counsel for the Petitioner, and Mr. Suresh Kumar, learned counsel for Respondent No.1.

2. By this Writ Petition, preferred under Article 227 of the Constitution of India, the Petitioner is challenging the Judgment and Order dated 15th January 2018 passed by the District Judge-9, Pune, in Civil Appeal No.607 of 2011, filed by the Petitioner challenging the order dated 26th August 2010 passed by the Estate Officer, under Section 5-A(2) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, in respect of the suit property bearing Survey No.289, (Old Gat No.2340) New Gat No.1354/2, admeasuring 5.54 R, situate at Village Wagholi, Taluka Haveli, District Pune.

3. As per the case of the Petitioner, the said property was originally belonging to one Chandar Krushnaji Dhole. By virtue of the registered Sale Deed dated 17th August 1996, Petitioner has conveyed the said property and handed over possession of the same to one Mr. Vitthal Laxmanrao Tambe. In his turn, Mr. V.L. Tambe had conveyed the said property to Mr. Jitendra Bhatewara and four others by the registered Sale Deed, the mutation entry of which was made by M.E. No.9219.

Thereafter, Mr. Jitendra Bhatewara had sold the said property by registered Sale Deed dated 24th August 2001 in favour of Respondent No.3.

4. Respondent No.3 has, thereafter, filed the Suit, bearing Regular Civil Suit No.1715 of 2001, in the Court of Civil Judge, Senior Division, Pune, on 9th November 2001, simplicitor for injunction, restraining Respondent No.1 herein from disturbing his possession over the suit property. During pendency of the Suit, Respondent No.3 has conveyed the said property to Respondent No.2 by registered Sale Deed dated 12th April 2005. The Suit, filed by Respondent No.3, came to be dismissed on merits by the 7th Additional Civil Judge, Senior Division, Pune, vide Judgment and Order dated 22nd September 2006. Being aggrieved thereby, Respondent No.3 preferred Civil Appeal No.742 of 2006 in the District Court, Pune, which came to be dismissed for default on 12th January 2009. However, in the meanwhile, Petitioner has taken up the said property for development by virtue of 'Agreement of Development' and 'Power of Attorney' dated 30th December 2006 from Respondent No.2 and subsequently, purchased the said property by registered Sale Deed dated 13th October 2008.

5. Thus, according to the Petitioner, he is in lawful possession of the suit property. He has also carried out construction over the said

property, after obtaining 'N.O.C.' from the Gram Panchayat, Wagholi, on 5th October 2009. In this backdrop, on 26th August 2010, Petitioner was surprised to receive the impugned notice-cum-order from the Estate Officer (Respondent No.1 herein) under Section 5-A(2) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, (for short, "*Public Premises Eviction Act*").

6. The said notice was issued in the name of Respondent No.3. On making enquiries with Respondent No.3, Petitioner came to know about the earlier litigation and then, he challenged the said notice in the Appellate Court of District Judge-9, Pune, by preferring Appeal, under Section 9 of the Public Premises Eviction Act, to set aside the order dated 26th August 2010. The learned Appellate Court was, however, pleased to dismiss the said Appeal on the count that, it was not maintainable under Section 9 of the Public Premises Eviction Act, on the count that, against the notice issued under Section 5-A(2) of the Public Premises Eviction Act, there is no provision of Appeal.

7. This Judgment and Order of the Appellate Court is challenged in this Writ Petition by learned Senior Counsel for the Petitioner by submitting that, the impugned order dated 26th August 2010 is, on the face of it, illegal, void *ab-initio* and the same is contrary to the provisions of Sections 4 and 5 of the Public Premises Eviction Act. According to

learned Senior Counsel for the Petitioner, Respondent No.1 ought to have issued the show cause notice to the Petitioner under Section 4 of the Public Premises Eviction Act, as it is the Petitioner, who is in lawful occupation of the suit property. Respondent No.1 has, however, issued notice to Respondent No.3 and that too, under Section 5-A(2) of the Public Premises Eviction Act. Thus, the mandatory requirement is not followed in the present case. Secondly, it is submitted that, as it is the Petitioner, who has carried out construction over the suit property, under Section 5-A(2) of the Public Premises Eviction Act, the notice should have been issued to him and not to Respondent No.3. Therefore, on this count also, the impugned notice is liable to be quashed and set aside. In support of this submission, learned Senior Counsel for the Petitioner has also placed reliance on the Judgment of the Apex Court in the case of *Sanjay Medicos and Anr. Vs. Director (Admn.) LNJP Hospital, 2003 SCC OnLine Del 88*. According to learned Senior Counsel for the Petitioner, as the Appellate Court has not considered all these aspects of the case in their proper and legal perspective, the impugned Judgment and Order of the Appellate Court is liable to be quashed and set aside.

8. Per contra, learned counsel for Respondent No.1 has supported the impugned Judgment and Order of the Appellate Court by submitting that, the possession of the Petitioner in the suit premises being totally

unauthorized and illegal, the notice issued under Section 5-A(2) of the Public Premises Eviction Act is perfectly legal and valid. In the earlier litigation, it has been categorically held that, the predecessor of the Petitioner and even his predecessor has no right, title or authority to remain in possession of the suit property and since a person, who was not allowed to occupy such premises, has carried out the construction, the only section applicable thereto is Section 5-A(2) of the Public Premises Eviction Act. Against the order passed under the said Section, the remedy of Appeal, as provided under Section 9 of the Public Premises Eviction Act, is not available. The Appellate Court has, therefore, rightly dismissed the Appeal and in writ jurisdiction, no interference is warranted therein.

9. A very short point for consideration, arising in this Writ Petition, is, *'whether the notice issued by the Estate Officer to Respondent No.3, under Section 5-A(2) of the Public Premises Eviction Act, is legal, valid and correct ?'*

10. As regards the authority, title or possession of the Petitioner over the suit premises, it has already been held in the previous litigation, bearing Regular Civil Suit No.1715 of 2001, that, the predecessor-in-title of the Petitioner has absolutely no legal right, title and possession over the suit property and hence, it follows that the Petitioner cannot derive

any such title or legal possession over the suit property. The certified copy of the Judgment passed in Regular Civil Suit No.1715 of 2001 is produced on record of the case and it goes to prove that the said Suit was filed by Respondent No.3 – Bhupendra Jain, contending, *inter alia*, that, he is in lawful possession of the same on the basis of the Sale Deed, under which he has purchased the suit property from Jitendra Bhatewara, who has, in his turn, purchased the same from Mr. V.L. Tambe and Mr. V.L. Tambe has purchased the same from the original owner Chander Krushnaji Dhole.

11. The perusal of the Judgment and Order passed in Regular Civil Suit No.1715 of 2001 clearly goes to show that, when the property was belonging to and in possession of the original owner Chander Krushnaji Dhole, at that time itself, it was acquired for the purpose of the Air Force Authorities and Chander Krushnaji Dhole was paid compensation thereof. Therefore, the fact that the suit property is a 'public premises', which is acquired way back in the year 1955, and possession thereof was also handed over to the Military Estate Officer on 21st June 1955 itself, is not disputed. In the earlier Suit, it has also been held that, in these premises, Chander Krushnaji Dhole has no right to transfer the said property to Mr. V.L. Tambe and in his turn, Mr. V.L. Tambe has no right or title to the suit property to transfer the same to Mr. Jitendra Bhatewara. Therefore, Respondent No.3 cannot derive any title from Mr.

Jitendra Bhatewara. Consequently, Respondent No.2 also cannot get any title over the suit property from Respondent No.3. As a result, it follows that, if the Petitioner's predecessor-in-title has no right, authority, title or possession over the suit property, the Petitioner also cannot derive any such title or possession over the suit property.

12. It is pertinent to note that, against the said Judgment and Order in Regular Civil Suit No.1715 of 2001, Respondent No.3 has preferred the Appeal; however, the said Appeal came to be dismissed for default on 12th January 2009, as he failed to pursue the same. Hence, the Judgment and Decree passed in Regular Civil Suit No.1715 of 2001 has become final. Therefore, now it stands confirmed that, not only the the Petitioner's alleged occupation over the suit property, but, even that of Respondent No.3, to whom the impugned notice is issued, is also totally unauthorized and illegal.

13. Now the provisions of Section 5-A(1) and (2) of the Public Premises Eviction Act, under which the impugned order is passed, need to be considered. The said provisions, for ready reference, are reproduced as follows :-

“5-A. Power to remove unauthorized constructions, etc. -

(1) No person shall -

*(a) erect or place or raise any building or
any movable or immovable structure or*

fixture;

(b) display or spread any goods;

(c) bring or keep any cattle or other animal;

on, or against, or in front of, any public premises, except in accordance with the authority, whether by way of grant or any other mode of transfer, under which he was allowed to occupy such premises.

(2) Where any building or other immovable structure or fixture has been erected, placed or raised on any public premises in contravention of the provisions of sub-section (1), the Estate Officer may serve upon the person erecting such building or other structure or fixture, a notice requiring him either to remove or to show cause why he shall not remove such building or other structure or fixture from the public premises within such period, not being less than seven days, as he may specify in the notice; and on the omission or refusal of such person either to show cause, or to remove such building or other structure or fixture from the public premises or where the cause shown is not, in the opinion of the Estate Officer, sufficient, the Estate Officer may, by order, remove or cause to be removed the building or other structure or fixture from the public premises and recover the cost of such removal from the person aforesaid as an arrear of land revenue.

(3). ”

14. Thus, according to this provision, whenever the construction is made on, against or in front of any 'public premises', except in accordance with the authority (whether by way of grant or any other mode of transfer), under which he was allowed to occupy such premises, the Estate Officer is authorized and entitled to pass such order for removal of the construction.

15. In the instant case, admittedly, the construction is made by a person, who is not authorized occupant of the said property and in such situation, the show cause notice or order can be issued only under Section 5-A(2) of the Public Premises Eviction Act and not under Section 5-B of the said Act.

16. Section 5B of the Public Premises Eviction Act contemplates *“demolition of unauthorized construction, when it is made by any person in occupation of such public premises under an authority, whether by way of grant or any other mode of transfer”*.

17. In the instant case, as, admittedly, the construction is not made by the person authorized to occupy the said premises, the provisions of Section 5-B of the Public Premises Eviction Act cannot be made applicable and hence, the order passed, under Section 5-A(2) of the

Public Premises Eviction Act, by the Estate Officer is required to be upheld.

18. In this respect, this Court can place reliance on the Judgment of the Allahabad High Court in the case of *Yogesh Agarwal Vs. Estate Officer and Ors., along with connected matters, AIR 2016 ALL 41*, relied upon by learned counsel for Respondent No.1, which clearly lays down the distinction between Sections 5-A and 5-B of the Public Premises Eviction Act. It is categorically held that,

“Sections 5-A and 5-B operate in clearly distinct areas. Sub-section (1) of Section 5-B applies to a situation where a person is in occupation of public premises under an authority, whether by way of grant or any other mode of transfer. Where such a person commences, carries on or completes the erection of a building or the execution of any work in contravention of or without being authorized by such authority, the Estate Officer is empowered to make an order directing the demolition of the erection or work, as the case may be, after furnishing an opportunity to show cause. Section 5-B, in other words, applies to situations where the occupation of public premises is under authority but the work, which has been commenced, carried on or completed, is without authority or in contravention of the terms of the authority. Section 5-A and Section 5-B hence operate in different situations. The 'Statement of Objects and Reasons' accompanying the Act 61 of 1980, which introduced Sections 5-A, 5-B and 5-C, indicates that the purpose of the amendment was to overcome the difficulties, which have been experienced in the working of the Act, and

to make the administration of the Act more effective. This was, inter-alia, by “including suitable provisions in the Act to deal with squatting or spreading of goods and removal of unauthorized constructions or encroachments on public premises. Where the erection of a construction or the execution of any work is by a person, who is in occupation of public premises under an authority but the work is found to be contrary to the terms of the authority or in breach of the authority, it is Section 5-B, which covers such a situation. The legislature in its wisdom provided for an appeal against an order of eviction under Section 5. The legislature provided for an appeal against an order under Section 5-B. An appeal has also been provided against an order under Section 5-C. Section 5-C deals with the power to seal unauthorized constructions. Section 7 provides for the recovery of rent or damages and an appeal is provided against an order passed under that Section. However, the legislature not having provided an appeal under Section 9 in respect of an order passed under Section 5-A, an appeal against an order under Section 5-A would not be maintainable.”

19. Thus, when an order is passed under Section 5-A(2) of the Public Premises Eviction Act by the Estate Officer, the remedy of Appeal, as provided under Section 9 of the Public Premises Eviction Act, is not at all available. As a matter of fact, the wording of Section 9 of the Public Premises Eviction Act is itself very clear and categorically lays down that, *“the Appeal shall lie from every order of the Estate Officer made in respect of any public premises under Section 5 or sub-section 5-B or sub-section 5-C or Section 7 of the Public Premises Eviction Act”*. This

Section is, thus, conspicuously silent about the remedy of Appeal against any action or order passed under Section 5-A(2) of the Public Premises Eviction Act. Therefore, in the present case, as the order is passed by the Estate Officer under Section 5-A(2) of the Public Premises Eviction Act, the Appellate Court has rightly held that the Appeal preferred against the said order is not at all maintainable under Section 9 of the said Act.

20. The submission of learned Senior Counsel for the Petitioner is, however, to the effect that, such notice under Section 5-A(2) of the Public Premises Eviction Act is required to be issued to the person, who has allegedly carried out unauthorized construction. Here in the case, it is submitted that, it is the Petitioner, who has carried out such construction; however, the impugned notice under Section 5-A(2) of the Public Premises Eviction Act is issued to Respondent No.3 and, therefore, on this very ground itself, the impugned notice is liable to be quashed and set aside.

21. In support of his submission, learned Senior Counsel for the Petitioner has relied upon the aforesaid Judgment of the Delhi High Court in the case of *Sanjay Medicos (Supra)*. In that case, as it was found that one Baba Haider Dass Ashram has erected the unauthorized structure and let out the establishment to the Petitioner, it was held that, the proceedings under sub-section (2) of Section 5-A of the Public

Premises Eviction Act could not have been initiated without serving notice to the said Baba Haider Dass Ashram. It was further held that, since notice under Section 5-A(2) of the Public Premises Eviction Act has not been served upon Baba Haider Dass Ashram, nor was it made a party in the proceedings, even after the Petitioner had taken specific objection in respect thereto, the proceedings and consequential order passed under Section 5-A(2) of the Public Premises Eviction Act was not in accordance with law and has to be quashed.

22. In the present case also, according to learned Senior Counsel for the Petitioner, as the notice under Section 5-A(2) of the Public Premises Eviction Act is not issued to the Petitioner, but it is issued to Respondent No.3, who is predecessor of the Petitioner's predecessor-in-title, that notice is not legal and valid. It is submitted that, the Petitioner has got the 'Plan' sanctioned from the concerned Gram Panchayat and constructed a building in the year 2009 or thereabout. It is urged that, in the earlier Suit, bearing Regular Civil Suit No.1715 of 2001, the description of the suit property is given as 'open space of land', admeasuring 6,000 sq.ft. area, with the construction of plinth only, which shows that subsequent construction of the building thereon is carried out by the present Petitioner and, therefore, as the notice to the Petitioner is not issued under Section 5-A(2) of the Public Premises Eviction Act, but, it is issued to Respondent No.3, such notice cannot be construed as legal and valid.

23. In my considered opinion, however, this contention cannot be accepted, as it is pertinent to note that Respondent No.3, who has filed the earlier Suit, bearing Regular Civil Suit No.1715 of 2001, and after dismissal thereof, even filed Civil Appeal No.607 of 2011, has never brought to the notice of either Respondent No.1 or to the Court that he has sold out the property to Respondent No.2 and thereafter, Respondent No.2 has conveyed the property to the present Petitioner and it is the Petitioner, who is carrying out construction thereon. According to the case of Respondent No.1, it is Respondent No.3, who has carried out unauthorized construction. The contents of paragraph No.3 of the notice are self-speaking to show that, Respondent No.3 has submitted the written 'Certificate of Assurance' dated 20th November 2001 for stopping further work till the matter was settled mutually or by the Court. This fact clearly goes to show that, construction was undertaken by Respondent No.3. Thereafter, he has filed the Suit, which came to be dismissed. Then, he has also preferred the Appeal, which came to be dismissed for default. However, at no time, he has contended that the construction is not being carried out by him, but by the Petitioner. It is also pertinent to note that, if at all, the construction is carried out by the Petitioner as a Power of Attorney-Holder of Respondent No.2, on the basis of 'Agreement of Development' executed in his favour, in such situation, when the Petitioner is acting for and on behalf of Respondent No.2 and his predecessor, and, admittedly, the

notice is issued to Respondent No.3, in my considered opinion, no fault can be found in the impugned notice, so as to set it aside.

24. In the reported authority of Delhi High Court in the case of *Sanjay Medicos (Supra)*, as per the Respondent's own case itself, it was Baba Haider Dass Ashram, who had erected the unauthorized structure about 10 - 15 years ago and let out the establishment to the Petitioners. Therefore, the Petitioners therein were merely 'lessee' and not the owners, like in the present case. In that background, it was held that, the proceedings under sub-section (2) of Section 5-A of the Public Premises Eviction Act could not have been initiated without serving notice to the said Baba Haider Dass Ashram. In this case, as per the case of Respondent No.1, the construction is carried out by Respondent No.3, despite giving written 'Certificate of Assurance' dated 20th November 2001 for stopping further work. Not only that, the Petitioner in the present case is the owner of the suit property and not any 'lessee'. Hence, the notice under Section 5-A(2) of the Public Premises Eviction Act is rightly issued to Respondent No.3, who has undertaken the construction.

25. If, in the meanwhile, Respondent No.3 has transferred the said premises to Respondent No.2 and then Respondent No.2 has further transferred the premises to the Petitioner, it cannot be expected that

fresh notice was required to be issued by Respondent No.1 to the Petitioner. Even a cursory glance to the various transfers stated above, under which the property has changed the hands in quick succession from original owner Mr. Chander Krushnaji Dhole to Mr. Vitthal Laxmanrao Tambe; then to Mr. Jitendra Bhatewara; then to Respondent No.3; then to Respondent No.2 and, thereafter, to the present Petitioner, makes it apparent that the entire endeavour is to avoid and give go-bye to the proceedings of eviction under the Public Premises Eviction Act.

26. If one considers the provisions of the Public Premises Eviction Act, which is enacted, as observed by the Constitution Bench of the Hon'ble Supreme Court in the case of *Ashoka Marketing Ltd. Vs. Punjab National Bank*, AIR 1999 SC 855, to deal with the mischief of rampant unauthorized occupation of public premises, by providing a speedy machinery for the eviction of persons in unauthorized occupation, then the very object would be frustrated if every time, any action of eviction is proposed to be taken against the unauthorized occupant, he keeps on transferring the said premises to some third person and the said third person again transferring it to further persons, thereby frustrating the measures taken under the said Public Premises Eviction Act for eviction. The object underlying this enactment is to safeguard the public interest by making available for public space the premises belonging to Central Government and to prevent misuse of such premises.

27. In the present case, it is pertinent to note that, the premises are acquired by Respondent No.1 for the Air Force purposes in the year 1955 itself and till now, on one ground or the other, the eviction of the unauthorized occupants thereon is stalled by transferring the said premises by the unauthorized occupant to further persons. In such situation, this contention raised by learned Senior Counsel for the Petitioner that notice under Section 5-A(2) of the Public Premises Eviction Act should have been addressed to the Petitioner and not to Respondent No.3, who is his predecessor-in-title, cannot be accepted.

28. The impugned Judgment and Order, therefore, passed by the Appellate Court, does not call for any interference in writ jurisdiction of this Court. Writ Petition, therefore, being without merits, stands dismissed.

29. Rule is discharged.

30. At this stage, learned counsel for the Petitioner submits that, the Appellate Court has granted the order of stay to the operation of the impugned notice and that stay order is running and is in existence till today. It is submitted that, the Petitioner wants to approach the Hon'ble Supreme Court against the order of this Court and, therefore, the said order of stay be extended for a further period of eight weeks.

31. Learned counsel for the Respondents opposed this request on the ground that, the matter is under the Public Premises Eviction Act. The premises are acquired in the year 1955 itself and since then, on one or the other pretext, the matter is being dragged.

32. However, considering that the order of stay is running and is in existence till today, in the interest of justice, in order to enable the Petitioner to approach the Hon'ble Supreme Court, the said order of stay is extended for a period of eight weeks from today, with a specific direction that, in no case, the said period will be further extended.

[DR. SHALINI PHANSALKAR-JOSHI, J.]