

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7712 OF 2018

Life Insurance Corporation of India ... Petitioner
Vs.
Ghanshyam Pitumal Punjabi ... Respondent

WITH
WRIT PETITION NO.7720 OF 2018

Life Insurance Corporation of India ... Petitioner
Vs.
Kamlesh Vasudev Shringi ... Respondent

WITH
WRIT PETITION NO.7736 OF 2018

Life Insurance Corporation of India ... Petitioner
Vs.
Alexander Pothan through her Son
& C.A. Pothan Alexander ... Respondent

WITH
WRIT PETITION NO.7958 OF 2018

Life Insurance Corporation of India ... Petitioner
Vs.
Chandra Satramdas Chandiramani (decd)
through Legal Heirs Mohan Satramdas
Chandiramani and others ... Respondents

Mr. Akshay A. Shah for Petitioner in all Writ Petitions.
Mr. Amarendra Mishra for Respondent in all Writ Petitions.

CORAM : R. G. KETKAR, J.
DATE : AUGUST 28, 2018

P.C. :

Heard Mr. Shah, learned Counsel for the petitioner and
Mr. Mishra, learned Counsel for the respondent in all the Petitions at
length.

2. These Petitions take exception to the orders passed by the learned

trial Judge rejecting the application filed by the petitioner under Order VII, Rule 11(d) of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for rejection of the plaint on the ground that the Suits instituted by the respondent are barred by the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short 'Act'). As the common questions of law and fact arise in these Petitions, the same can conveniently be disposed of by passing common order. For appreciating the controversy between the parties, facts from Writ Petition No.7736 of 2018 are taken into consideration.

3. In support of this Petition, Mr. Shah submitted that respondent-plaintiff has instituted the Suit for declaration that plaintiff is a tenant of the defendant (petitioner herein) in respect of premises bearing T.C.No.2327, building No.215, Row No.2, Villa No.5 at JBNT, Borivali (West), Mumbai 400 103 (for short 'suit premises') and for mandatory direction to the defendant to issue rent receipts in respect of the suit premises. The defendant took out application under Order VII, Rule 11(d) of the C.P.C. inter alia contending that Apex Court in the case of *Kaiser-I-hind Pvt. Ltd. Vs. National Textile Corporation (Maharashtra North) Ltd.*, AIR 2002 SC 3404 has held that the provisions of the Act will prevail over the Maharashtra Rent Control Act, 1999 (for short 'Maharashtra Rent Act'). In the case of ***Banatwala & Company Vs. L.I.C. of India***, AIR 2011 SC 3619, the only issue for consideration before the Apex Court was that whether the provisions of the Maharashtra Rent Act will be applicable for fixation of rent and for supplies of essential services as the same was not dealt with in the Act and nothing beyond this.

4. Mr. Shah invited my attention to paragraphs 3 and 6 of the application. In paragraph 3, defendant contended that the suit premises is admittedly a public premises within the meaning of Section 2(e) of the

Act. In view of Section 15 of the Act, the jurisdiction of the Civil Court is expressly barred. In paragraph 6, reference is made to the definition of the expression “unauthorized occupation” in Section 2(g) of the Act. It is further asserted that if the Suit for declaration as a tenant is held to be maintainable then the definition of 'unauthorized occupation' under the Act will have no meaning, in the context that then every unauthorized occupant of the premises other than the recorded tenants will have remedy of filing the Suits for declaration as a tenant. In paragraph 7, it is contended that the occupants of the public premises are the occupants of the premises by way of an authority from the landlord to occupy the premises. The authorized occupants of the premises which are public premises cannot be termed as 'tenants' as defined under the Maharashtra Rent Act. He, therefore, submitted that as the plaintiff is not authorized occupant of the suit premises, the provisions of the Act will be applicable and the learned trial Judge was not justified in rejecting the application. Mr. Shah relied upon the following decisions:

- a. ***M/s. Indo Imex Agencies (Pvt.) Ltd. Vs. L.I.C. of India*, AIR 1983 Delhi 409**, and in particular paragraph 12;
- b. **Suhas H. Pophale** (*supra*), and in particular paragraphs 44 and 48; and
- c. **Banatwala & Company** (*supra*), and in particular paragraphs 58 and 72.

5. On the other hand, Mr. Mishra supported the impugned order. He submitted that in fact, the defendant had filed application under Section 9-A of C.P.C. for framing preliminary issue on the point of jurisdiction. The self-same arguments were also advanced before this Court. By order dated 07.09.2015, after considering the decision of the Apex Court in ***Suhas H. Pophale Vs. Oriental Insurance Company Limited and its Estate Officer*, (2014) 4 SCC 657**, this Court, in paragraph 15, referred to the view taken by the trial Court to the effect that with regard to the

reliefs claimed in the Suit, the same cannot be obtained under the Act in respect of which, exclusive jurisdiction is vested in the Small Causes Court in respect of the Rent Act. He submitted that in fact, petitioner has neither annexed nor referred this order in the present Petitions. In any case, he submitted that if the application made by the defendant under Order VII, Rule 11(d) of C.P.C. is allowed, defendant is not in a position to show that Estate Officer under the Act can entertain and try the Suit for declaration of the tenancy rights.

6. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. A perusal of the decisions relied by Mr. Shah shows that they were dealing with the cases where the public authority has invoked the provisions of the Act for evicting unauthorized occupants. Mr. Shah was not in a position to cite any judgment rendered by this Court or Apex Court holding that Suit for declaration of tenancy rights can be entertained and tried by the Estate Officer appointed under the Act. Even otherwise, Section 15 of the Act lays down thus,

“15. **Bar of jurisdiction:-** No court shall have jurisdiction to entertain any suit or proceeding in respect of-

- (a) the eviction of any person who is in unauthorized occupation of any public premises, or
- (b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under Section 5A, or
- (c) the demolition of any building or other structure made, or ordered to be made, under section 5B, or
- (cc) the sealing of any erection or work or of any public premises under section 5C, or
- (d) the arrears of rent payable under sub-section (1) of section 7 or damages payable under sub-section (2), or interest payable under sub-section (2A), of that section, or
- (e) the recovery of-
 - (i) costs of removal of any building, structure or fixture or goods, cattle or other animal under section 5A, or

- (ii) expenses of demolition under section 5B, or
- (iii) costs awarded to the Central Government or statutory authority under sub-section (5) of section 9, or
- (iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the statutory authority.”

7. A perusal of Section 15, extracted hereinabove, shows that the reliefs claimed in the present Suits are not covered by Section 15 of the Act. That apart, the self-same arguments were also raised before this Court in the earlier round of litigation arising from application filed by the defendant under Section 9-A of C.P.C. This Court declined to interfere with the orders passed by the trial Court which held that the reliefs claimed in the Suit cannot be obtained under the Act in respect of which exclusive jurisdiction is vested in the Small Causes Court. Hence, Petitions fail and the same are dismissed.

(R. G. KETKAR, J.)