

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION Stamp No. 21831 of 2018

Pune Cantonment Board	..Petitioner.
Vs	
Tarabai D. Pardeshi & Ors	..Respondents.

Dr. G.R. Sharma I/by Mr. Gaurav Sharma Advocate for the petitioner.

Mr. Vaibhav Ugle for Respondent No. 1 to 4.

CORAM: R.D. DHANUKA, J.
DATE : 4th October, 2018

P.C:-

1 By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 22nd June, 2018 passed by the learned District Judge-17, Pune in Misc. Civil Appeal No. 172 of 2018 allowing the said appeal filed by the original plaintiffs and setting aside the order dated 26/4/2018 passed by the learned 5th Joint Civil Judge Senior Division Pune below Exh.5 in Regular Civil Suit No. 134 of 2018.

2 The respondents (original plaintiffs) had filed a suit inter-alia praying for injunction against the petitioner (original defendant) restraining the petitioner from dispossessing the plaintiffs from the suit property without following due process

of law. It is the case of the petitioner that the respondents (original plaintiffs) are the relatives of ex- employees and not in the employment of the petitioner, are already allotted alternative accommodation by the petitioner. The notice of eviction was issued by the petitioner. The only right claimed by the respondents in the suit property is that they have been staying therein for the last several decades and cannot be dispossessed by the petitioner without due process of law.

3 The learned Trial Judge considered all these aspects and has refused to grant any injunction in favour of the respondents by passing a detail order. The Appellate Court, however, has allowed the appeal filed by the respondents bearing Misc. Civil Appeal No. 172 of 2018 only on the ground that the petitioner cannot seek possession of the suit property from the occupants, without following due process of law and the petitioner will have to adopt appropriate action under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

4 The learned counsel for the petitioner invited my attention to the averments made in the plaint filed by the respondents, the prima facie findings rendered by the learned Trial Judge rejecting the application for injunction filed by the

respondents and the findings rendered by the Appellate Court. He submits that the respondents are trespassers and they have no right, title or interest in the suit property.

5 The learned counsel for the respondents, on the other hand, submits that the appellate Court was justified in allowing the appeal filed by his client. He submits that his clients are in possession of suit property since last several decades and submits that the respondents cannot be evicted without following due process of law.

6 A perusal of the plaint filed by the respondents show that injunctions implicitor has been sought against the petitioner from disturbing the peaceful possession of the plaintiff's suit property without due process of law on the basis of notice of eviction already issued by the petitioner. Notice of eviction has already been issued. In so far as possession of the property is concerned, petitioner will have to adopt the appropriate action under the provisions of law for evicting the respondents. However, the respondents cannot be allowed to occupy and deal with the property of the petitioner in which the respondents have prima facie no title or interest of whatsoever nature. In my view, it would be thus in the interest of justice that the Court

Receiver High Court Bombay be appointed as Receiver of the suit property with a direction to appoint the respondents as agent of the Court Receiver, however, on payment of royalty and without furnishing any security. The petitioner would be at liberty to adopt appropriate proceedings for eviction of the respondents in pursuance to the notice of eviction already issued.

7 The respondents are directed to cooperate with the Court Court Receiver in taking symbolic possession of the property. If the respondents do not pay the royalty as may be fixed by the learned Court Receiver, the Court Receiver shall seek further directions against the respondents from this Court.

8 The possession of the respondents would be subject to the further proceedings as may be filed by the petitioner for their eviction.

9 If any eviction proceedings are filed by the petitioner, the same shall be disposed of as expeditiously as possible.

10 The impugned order passed by the Appellate Court on 22nd June, 2018 is quashed and set aside and is substituted by this order. Writ petition is allowed in aforesaid terms.

11 There shall be no order as to costs.

12 It is made clear that the respondents shall not part with the possession of the suit property and shall not create any third party rights or interest in the suit property, till the Court Receiver shall take possession of the suit property and even thereafter.

13 The parties as well as the Court Receiver shall act on the basis of an authenticated copy of this order.

(R.D. DHANUKA, J.)