

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 8984 OF 2018

Jamil Khan	... Petitioner
Vs.	
The Board of Trustees of the Port of Mumbai & Ors.	... Respondents

Mr. V.Y. Sanglikar, Advocate for the petitioner.
Mr. A.V. Anturkar, Senior Advocate a/w. Roop Basu I/b. The Law
Point, Advocate for respondent no. 1.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **13th August, 2018.**

P.C.:

Rule. Rule made returnable forthwith. By consent, Writ
Petition is heard finally at the stage of admission.

2. This Writ Petition is directed against the order dated 16th July, 2018 passed by the Principal Judge, City Civil Court, Greater Mumbai thereby dismissing Miscellaneous Appeal No. 173 of 2017, which was preferred against the order dated 8th June, 2017 passed by the Estate officer under sections 5 and 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

3. As per the case of the petitioner, he is occupying the suit premises, i.e., plot of land bearing no. 334, admeasuring 66.61 sq.

mtrs situated at Signal Hill, Avenue Road, Mazgaon. The petitioner is also occupying two rooms on the suit plot. The petitioner claims that he is in possession of the suit premises through one Aziz Shaikh, who was sub-tenant of Karwa, i.e., respondent nos. 2 to 5. The petitioner claims that he is a caretaker of a mosque which stands on the suit plot. Pursuant to the notice, respondent no. 1 has filed Case no. EO/E(175) of 2015 before the Estate Officer wherein it was directed that the possession of the suit premises and plot is to be handed over to the applicants. In the Appeal filed against the said order, the petitioners lost. Hence, this Writ Petition.

4. The learned counsel for the petitioners submitted that the petitioners are in possession of the suit premises through Aziz Shaikh and not through Karwa. He submitted that Karwa, i.e., respondent nos. 2 to 5 were never in possession and respondent no. 1 have filed the suit in the year 1985 in Small Causes Court. The learned Judge of the Small Causes Court has passed the Eviction decree on 21st August, 1999 against the respondent nos. 2 to 5. However, the said decree was not executed by respondent no. 1 for 12 years but thereafter they filed the Application under the Public Premises Act against respondent nos. 2 to 5 and present petitioner.

He has submitted that the notice of the Application before the Estate Officer was never served on the petitioner and the proceedings were heard and decided ex parte by the Estate officer. He pointed out that notice which was allegedly served on him and challenge is that the signature appearing on the said acknowledgment is not his signature but it was obtained and filed before the Estate officer. He further submitted that the petitioner is not only looking after the mosque but also running an orphanage on the suit premises where nearly 79 children are staying. The learned counsel has argued on Section 27 of the Limitation Act. He further argued that the petitioner is in possession of the suit premises since 1972, i.e., prior to enactment of Public Premises Act, hence in view of the ratio laid down by the Hon'ble Supreme Court in the case of **Suhas H. Pophale vs. Oriental Insurance Company Ltd. and its Estate officer, reported in (2014) 4 SCC 657**, Public Premises Act is not applicable.

5. Per contra, the learned senior counsel for respondent no. 1, in reply, has submitted that the petitioner's case that he is not claiming through Karwa, i.e., respondent nos. 2 to 5 but through one Aziz Shaikh, is false. The learned senior counsel pointed out relevant paragraphs in the memo of appeal filed before the City Civil Court

where the petitioner has said that he is claiming through respondent nos. 2 to 5. There is no whisper in the memo before the Principal Judge of City Civil Court about running of orphanage but for the first time before this Court, the fact of running of orphanage is addressed to create sympathy. The learned senior counsel has further relied and referred to the acknowledgment of service of notice sent by the Estate Officer. He pointed out that the notice, which was sent under the Public Premises Act by the Estate officer, was pasted by the bailiff on 18th June, 2015 at the suit premises, i.e., Plot no. 334 at Mazgaon, of which the petitioner, as per his case, was in possession and was in occupation. In support of his submissions, he relied on the reasoning given by the Principal Judge wherein she has compared the signatures of the petitioner on Vakalatnama/appeal memo and on the acknowledgment which was produced before the Court. The learned senior counsel submitted that respondent no. 1 has claimed the damages of Rs.35,95,422.15 with interest @18% p.a., mentioned in the order of the learned Principal Judge, City Civil Court. The petitioner being in possession and use of the suit premises, is to be directed to deposit the amount of the damages. While supporting the order passed by the learned Principal Judge, he argued that the learned Principal Judge has rightly held that there

was a good service and the petitioner neither appeared before the Estate officer nor gave a good reason for remanding back the said matter to the Estate officer.

6. Both the counsel, apart from service, have raised other points about the applicability of Rent Act, Limitation Act, however, I do not deal with those points but are kept open before the Estate officer. In this Writ jurisdiction, I am of the view that in all fairness, the petitioner should get an opportunity of defence and audience and his case is to be tested on merit in accordance with law and therefore, the matter is to be remanded to the Estate officer to give the petitioner a fair opportunity. All the contentions in respect of other points so also the factual challenge on the point of tenancy, possession and damages/arrears are kept open. In view of this, following order is passed:

- (i) The order dated 16th July, 2018 passed by the learned Principal Judge, City Civil Court, Greater Bombay and so also the ex-parte order dated 8th June, 2017 passed by the Estate officer **only against this petitioner** is hereby set aside;
- (ii) It is made clear that respondent nos. 2 to 5/Karwa have

not challenged the order of eviction passed by the Estate officer, as they have submitted to the order of the Estate Officer;

- (iii) Writ Petition is allowed subject to payment of cost of Rs.40,000/- to respondent no. 1 payable on or before 21st August, 2018 before the Estate Officer;
- (iv) Parties to appear before the Estate Officer on 21st August, 2018 at 11 a.m.;
- (v) The petitioner is allowed to file reply/written statement along with the documents on which he is relying before the Estate Officer on 28th August, 2018 subject to payment of damages of Rs.5,00,000/- to respondent no. 1 without prejudice towards the use and occupation of the suit premises;
- (vi) The proceedings before the Estate officer is to be concluded on or before 15th October, 2018.

7. Rule is made absolute on above terms.

(MRIDULA BHATKAR, J.)