

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13243 OF 2018

Sanjay Kumar Ashta Prop. of M/s. Sarathi Enterprises ... Petitioner
Vs.
Eviction Officer, Airport Authority of India and others... Respondents

Ms Meena A. Ruparel for Petitioner.
Mr. Tejas Bhide for Respondent No.2.
Mr. P. K. Dhakephalkar, Senior Advocate a/w. Mr. Nikhil Apte i/b.
Wadia Ghandy & Co. for Respondent No.3.

CORAM : R. G. KETKAR, J.
DATE : NOVEMBER 26, 2018

P.C. :

Heard Ms Ruparel, learned Counsel for the petitioner, Mr. Bhide, learned Counsel for the respondent No.2 and Mr. Dhakephalkar, learned Senior Counsel for the respondent No.3 at length.

2. By this Petition under Article 227 of the Constitution of India, petitioner has challenged the order dated 12.10.2018 (exhibit-N, pages 137-138) as also the order dated 23.10.2018 (exhibit-P, page 143) passed by the respondent No.1 - Eviction Officer, Airports Authority of India. By order dated 12.10.2018, respondent No.1 directed the petitioner herein to comply the directions issued by him in Rojnama dated 03.10.2018.

3. The petitioner filed application dated 06.10.2018 inter alia requesting to respondent No.1 as under:

- “- to pass fresh directions, directing the respective parties to file appropriate pleadings and documents raising the issue of jurisdiction and thereafter conduct the hearing and pass necessary orders with respect to your jurisdiction to entertain the eviction case;
- that without the issue of jurisdiction being decided, this Hon'ble Authority cannot proceed with the eviction matter as

this Hon'ble Authority would not have authority without jurisdiction to proceed in the matter.”

4. The petitioner contended that issue of jurisdiction to entertain the eviction proceedings initiated against him is required to be decided first before proceeding with the eviction proceedings. The petitioner contended that the first respondent has no authority to proceed with the matter.

5. In support of this Petition, Ms Ruparel submitted that by order dated 15.10.2003 passed by this Court in Notice of Motion No.2760 of 2003 in Suit No.2967 of 2003, liberty was reserved to the petitioner to take out appropriate proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short 'Public Premises Act'), if in law, it is so applicable. She submitted that accordingly proceedings were initiated under the Public Premises Act in 2005 and the said proceedings continued till 2008. In the year 2008, proceedings initiated under the Public Premises Act were postponed. On 11.03.2016, notice under Section 28-C of the Airports Authority of India Act, 1994 (for short 'A.A.I. Act') was issued invoking the provisions of the said Act. It is the case the petitioner that the parties are governed by the provisions of the Public Premises Act and respondents were not justified in invoking the provisions of the A.A.I. Act. The issue was, therefore, raised before the Eviction Officer, namely, respondent No.1. Respondent No.1, without deciding the said issue, is proceeding with the eviction proceedings. Respondent No.1 has no authority under A.A.I. Act to proceed with the eviction proceedings. She, therefore, submitted that Petition requires consideration.

6. On the other hand, Mr. Dhakephalkar submitted that earlier, petitioner had instituted Writ Petition No.8011 of 2018 inter alia

challenging - (i) the order, which was received by the petitioner on 18.05.2018 as also (ii) the order dated 27.06.2018 passed by the first respondent. He submitted that by order dated 10.08.2018, this Court disposed of the Petition by observing that in the event the final order in the eviction proceedings is adverse to the interest of the petitioner, then, while challenging it, the petitioner can raise appropriate pleas and grounds also in relation to the impugned order. Aggrieved by this order, the petitioner instituted S.L.P. before the Apex Court, which was dismissed on 05.10.2018. Mr. Dhakephalkar submitted that issue of jurisdiction is specifically kept open in the impugned order and the same will be decided at the time of disposal of the eviction proceedings finally. He, therefore, submitted that no case is made out for interfering with the impugned orders.

7. I have considered the rival submissions advanced by the learned Counsel appearing for the parties. I have also perused the material on record. As mentioned earlier, petitioner had instituted Writ Petition No.8011 of 2018 in this Court. In that Petition, petitioner challenged the order received on 18.05.2018. In that order, respondent No.1 reproduced paragraph 5 of the order dated 07.02.2017. By the order dated 27.06.2018, respondent No.1 rejected the application for stay and issued directions. This Court disposed of the Petition by directing that in the event the final order in the eviction proceedings is adverse to the interest of the petitioner, then, while challenging it, the petitioner can raise appropriate pleas and grounds also in relation to the impugned order. In paragraph 2, this Court also specifically kept all contentions for being raised at an appropriate stage. The petitioner challenged that order before the Apex Court. By order dated 05.10.2018, the Apex Court dismissed the S.L.P.

8. In the order dated 12.10.2018, respondent No.1 noted that petitioner herein had suppressed order dated 10.08.2018 passed by this Court in Writ Petition No.8011 of 2018. The said order was challenged before the Apex Court by filing Special Leave Petition. Respondent No.1 further observed that petitioner is raising frivolous grounds and causing delay in deciding the case.

9. A perusal of the order dated 12.10.2018 shows that respondent No.1 has specifically observed that in view of the orders dated 10.08.2018 of this Court and 05.10.2018 of the Apex Court, the issue of jurisdiction will be decided at the time of disposal of the eviction proceedings. Thus, the respondent No.1 has not concluded the issue of jurisdiction and the same will be decided along with the main application for eviction. In view thereof, I do not find that the respondent No.1 has committed any error in passing the order on 12.10.2018. In so far as the challenge to the order dated 23.10.2018 is concerned, the first respondent had directed the parties to file affidavit of evidence. In view thereof, I do not find that the first respondent has committed any error in issuing directions contained in order dated 23.10.2018. Hence, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

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