

Mr. P. K. Dhakephalkar, Senior Advocate a/w. Mr. Viren Asar, Ms Shraddha Achliya and Ms Sanaya Kapadia i/b. Parinam Law Associates for Petitioners.

Mr. N. V. Walawalkar, Senior Advocate a/w. Roop B. and Nehal Mahul i/b. The Law Point for Respondent No.1.

1/3

paragraph 9 that the Appellate Court has to decide the appeal as expeditiously as possible and every endeavour has to be made to dispose of the appeal finally within one month from the date of filing of the appeal, after providing the parties an opportunity of being heard, in terms of Section 9(4) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short 'Act'). The hearing of the appeal commenced on 03.07.2018. The learned Judge heard the appellants (petitioners) on 26.07.2018, 09.08.2018, 10.09.2018 and 16.10.2018. In the midst of the hearing, application exhibit-4 was filed. The learned Judge, therefore, rejected the application.

4. Mr. Dhakephalkar submitted that the issue raised in the application goes to the root of the matter. He submitted that as many as 11 Writ Petitions have been filed in this Court raising the issue of jurisdiction of the Estate Officers to conduct the proceedings under the Act. The learned Judge, therefore, should wait for the decision of this Court in the pending Writ Petitions. In any case, the issue of jurisdiction is a pure question of law and the petitioners do not intend to adduce any evidence. The learned Judge, therefore, should have framed the preliminary issue and permitted the parties to advance the arguments and decide the said issue first before entering into merits of the appeal. He, therefore, submitted that the impugned order may be set aside thereby directing the learned Judge to decide the preliminary issue first.

5. On the other hand, Mr. Walawalkar submitted that the contention that Estate Officers have no jurisdiction to conduct the proceedings under the Act was not raised before the Estate Officer. He submitted that the appeal is required to be heard expeditiously in terms of Section 9(4) of the Act. The learned Judge had heard the petitioners on different dates, and therefore, no case is made out for entertaining the Petition.

6. I have considered the rival submissions advanced by the learned Senior Counsel appearing for the parties. I have also perused the material on record. It appears that during the pendency of the proceedings before the Estate Officer, petitioners did not raise objection to the competence of the Estate Officer to conduct the proceedings. A perusal of the impugned order shows that in the midst of the hearing, application exhibit-4 was filed for the reliefs, quoted hereinabove. After noting in paragraph 9 about the hearing of the appeal from time to time, the learned Judge rejected the application. Merely because Petitions are pending in this Court, that will not be a sufficient ground for staying the proceedings before the Appellate Authority. The learned Judge will decide the issue of jurisdiction along with other issues while deciding the appeal. In particular, the learned Judge will decide the issues raised in the Miscellaneous application dated 26.10.2018 (Exhibit-L, pages 467 to 470 of this Petition) as also note on the point of jurisdiction (Exhibit-I, pages 323 to 329 of this Petition), which was filed by the petitioners on 09.08.2018. In addition to this, all contentions of the parties on merits are expressly kept open. Subject to this, Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab