

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3643 OF 2019**

Bharat Petroleum Corporation Ltd. : Petitioner.
Versus
The Estate Officer and anr. : Respondents.

Mr. S J Chaurasia I/by Ashok Law Firm for the Petitioner.
Mr. V Y Sanglikar for the Respondents.

CORAM : S. S. SHINDE, J
DATE : 27th March 2019

P.C.

1 The order dated 23/01/2019 passed by the Respondent No.1 herein i.e. the Estate Officer of the New India Assurance Co. Ltd is taken exception to by way of the above Writ Petition.

2 Respondent No.2 – the New India Assurance Company Ltd. is the landlord and the Petitioner is the tenant of Flat No.B-17 situated in the Respondent No.2's building namely May fair Gardens at Liggle Gibbs Road, Malbar Hill, Mumbai 400 006. The area of the said flat is about 3264 sq.ft. Built up. It is the case of the Petitioner that the premises i.e. the flat was let out by the Respondent No.2 to the Petitioner on a monthly rent for residential user. Originally the lease agreement was executed with Burmah Shell Oil Storage and Distributing Co. in 1960. It is the further case of the Petitioner that the said lease was expired in 1965 and was not renewed, but the Petitioner which is the successor of the original tenant continued to occupy the said flat.

Though the original lease was expired, the rent was accepted by Respondent No.2 from the Petitioner by treating it as a monthly tenant subject to terms and conditions mentioned on the reverse of the rent receipts. As the Petitioner has been defaulting in payment of dues and the premises are require by Respondent No.2 for the use of accommodating their own officials, Respondent No.2 terminated the monthly tenancy of the Petitioner by notice dated 21/02/2012. The Petitioner replied the said notice by reply dated 16/03/2012 and refused to comply with the notice dated 21/02/2012. In spite of termination of tenancy, the Petitioner continues to occupy the said premises. Hence Respondent No.2 initiated proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 171 against the Petitioner bearing Case Nos.003/2014, 003A/2014 and 003B/2014 before the Estate Officer.

3 In the said proceedings the Estate Officer issued notices to the Petitioners, which were duly served on the Petitioners. In pursuance of the said notices, the Petitioners appeared through their Advocate and filed applications raising preliminary objection of jurisdiction. The Respondent filed a common reply to the said applications. Respondent No.1 rejected the said application vide order dated 25/06/2015. Against the said order, the Petitioner preferred Writ Petition bearing No.6744 of 2015, however, the said Writ Petition was disposed of by this Court by order dated 14/09/2015 observing that the issue

of jurisdiction be decided along with other issues and not as a preliminary issue. Thereafter the Petitioner filed Written Statement. The Petitioner thereafter requested Respondent No.1 to frame the issues in the proceedings. However Respondent No.2 objected for framing issues. Upon hearing the parties, Respondent No.1 finally passed order refusing to frame the issues. Being aggrieved by the said order dated 09/08/2017, the Petitioner preferred Writ Petition No.12816 of 2017. The said Writ Petition was disposed of by this Court vide order dated 01/02/2018 by observing that Respondent No.1 shall comply with the directions issued in the order passed in Writ Petition No.6744 of 2015. Thereafter the Respondent No.2 filed an affidavit in lieu of examination in Chief of their Deputy Manager one Mr. Rratan Kumar Purohit. The said witness is being cross examined by the Petitioner.

4 It is during the course of the said cross examination that a question was put to the witness about the lease agreements. By order dated 23/01/2019 the Estate Officer disallowed the said question on the objection raised by the advocate for Respondent No.2 on the ground that the proceedings are being in summary in nature. It is the said order dated 23/01/2019 which is taken exception to by way of the above Writ Petition.

5 The learned counsel for the Petitioner contended that as the proceedings filed before the Estate Officer are for eviction and for recovery of

possession, compensation, arrears and damages and therefore in the light of the said averments the question was asked to the witness in the cross examination about the lease agreements executed by Respondent No.2 with the other occupants of the building wherein the premises are situated so as to ascertain the market rent/compensation. He lastly contended that the Estate Officer erred in disallowing the question on the ground that the proceedings are being in summary nature. In support of his submission, the learned counsel for the Petitioner placed reliance on the judgment of the Apex Court in the case of *New India Assurance Co. Ltd. V/s. Nusli Neville Wadia and anr* reported in *AIR 2006 SC 876*.

6 The learned counsel for Respondents supports the impugned order. He contended that the Estate Officer has rightly disallowed the question as the proceedings are being summary in nature.

7 I have heard the learned counsel for the parties. I have also perused the material on record. Respondent No.2 has filed proceedings before the Estate Officer for eviction of the Petitioner from the subject premises and for recovery of arrears and damages. The witness of Respondent No.2 has filed his affidavit in examination in chief and he is under cross examination. It is in the said cross examination that the question regarding lease agreements was disallowed by the Estate Officer on the ground that the proceedings are being

summary in nature.

8 Now coming to the the judgment of the Apex Court in *Nusli Neville Wadia's* case (supra) on which reliance was sought to be placed on behalf of the Petitioner. In the said case the Apex Court observed that the Estate Officer being a creature of the statute must comply with the procedure laid down for recording evidence. In the said case, the question posed for consideration before the Apex Court was as under :--

“Who should begin to lead evidence in a proceeding under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short ‘the Act’) is the question involved in these appeals.”

9 In the present case, the Estate Officer issued notices to the Petitioners, the Petitioners appeared, Respondent No.2 herein i.e. the landlord filed affidavit in lieu of examination of their Deputy Manager and the said witness is at present under the cross examination. Therefore in the present case the witness of Respondent No. 2 Landlord is under cross examination. A perusal of the cross examination of the said witness would make it abundantly clear that number of questions were asked by the advocate appearing for the Petitioner herein before the Estate Officer. It is when the advocate for the Petitioner herein had asked the question about the lease agreements entered into between Respondent No.2 Landlord and the other tenants, that Respondent No.2 objected the said question. Respondent No.1 had sustained

the objection of Respondent No.2 and passed order which reads thus :-

“Objection sustained as proceedings before the Estate Officer are being summary in nature”

By any stretch of imagination, the order of the Estate Officer sustaining the objection of Respondent No.2 cannot be said to be perverse or needs interference in the writ jurisdiction of this Court as rightly submitted by the learned counsel appearing for Respondent No.2 by placing reliance upon the judgment of the Apex in the matter of Mohd. Yunus v/s. Mohd. Mustaquim and others reported in AIR 1984 SC 38 wherein the Apex Court in paragraph 7 has observed as under :-

“The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Art. 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or

tribunal purports to be based or to correct errors of law in the decision.”

The Apex Court has observed that the High Court does not act as an Appellate Court or Tribunal. It is further observed that the High Court will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct the errors of law in the decision.

10 In the context of the facts of the present case, it is also necessary to make a reference to the observations of the Apex Court in paragraph 56 of the case of *Nusli Neville Wadia* (supra). The Apex Court in the said case has observed that the Act provided for speedy remedy and the Estate Officer is expected to arrive at a decision as expeditiously as possible. The provisions of the Code of Civil Procedure and Evidence Act being not applicable, what is necessary to be complied with is the principles of natural justice. Considering the facts of the present case, this Court is fully convinced that the principles of natural justice are being followed by Respondent No.1 i.e. the Estate Officer.

11 Taking over all view of the matter, the order passed by the Estate Officer cannot be said to be suffering from any illegality or infirmity, therefore, there is no reason for this Court to cause interference with the impugned order in its writ jurisdiction. Accordingly, the Writ Petition stands disposed of.

[S. S. SHINDE , J]