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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3387 OF 2019**

All India Manufacturers Organization & Ors. Petitioners.

V/s

Life Insurance Corporation of India & Ors. Respondents.

Mr. Joglekar i/b Mr. Yajuvendra Singh for the Petitioner.

Mr. Shrinivas Bhavé a/w Sunayana Kashid a/w Sameer Panwalkar i/b
Bhavé and Co. for Respondent No.1.

Ms. M.M. Patel i/b M.M. Patel & Co. for Respondent No.3.

Mr. Sudhakar G. Lakhani for Respondent No.4.

CORAM: NITIN W. SAMBRE, J.

Order reserved on 22/7/2019

Order pronounced on 24/01/2020

P.C.:-

1] Petitioners are facing eviction proceedings under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. In the said proceedings, Petitioners moved an application on 14/8/2017, claiming that the Petitioners were tenants since 1956 and Respondent-Corporation had taken over premises after Nationalization and that being so, suit premises are governed by the provisions of Bombay Rent Act and not Public Premises (Eviction of Unauthorized

Occupants) Act, 1971. The said application came to be rejected vide impugned order dated 9/7/2018. Petitioners also moved an application on 17/4/2017 challenging jurisdiction of Estate Officer of entertaining the proceedings in the light of judgment of Division Bench of this Court in the matter of *Dr. Preeti Bhatt vs. Central Bank of India*¹ delivered on 20/7/2017 and also sought production of documents. Application-Exhibit-L-2 came to be moved to recall the order dated 9/7/2018 whereby application moved by the Petitioners on 14/8/2017 was rejected. Application-Exhibit-M came to be moved on 4/8/2018 for producing certain documents i.e. rent receipts.

2] The sum and substance of the applications moved by the Petitioners is, they are not governed by the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 but Bombay Rent Act, particularly having regard to Division Bench Judgment of this Court in the matter of *Dr. Preeti Bhatt*, cited supra.

3] All these applications are rejected by the impugned orders dated 9/7/2018, 26/10/2018 and 4/2/2019. As such, this Petition.

¹ 2017(6) Mh.L.J.330

4] While questioning all these orders, learned Counsel for the Petitioners would strenuously urge that once the issue is covered by Division Bench Judgment of this Court and in view of the order of this Court in Writ Petition (St) No. 12296 of 2015 preferred at the behest of the Petitioners in the very same matter decided on 30/6/2015, least that was expected of the Estate Officer was to allow the application and relegate parties to the proceedings under the provisions of the Bombay Rent Act and not under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The learned Counsel for the Petitioners, so as to substantiate his arguments referred to above, would further add that even if by Judgment dated 30/6/2015, this Court has directed the Estate Officer to deal with the proceedings in accordance with Division Bench Judgment of this Court in the matter of *Dr. Preeti Bhatt* cited supra, subsequent developments are required to be taken into account. The learned Counsel would draw support from various other judgments so as to substantiate his contentions on the same line.

5] Per contra, learned Counsel for the Respondent No.1 submits

that present one is an additional effort on the part of Petitioners to delay proceedings before Estate Officer, as on the same grounds, earlier, attempt of the Petitioners remained unfruitful. According to them, there are no subsequent developments which warrants reconsideration of the directions given by this Court on 30/6/2015. While inviting attention of this Court to the judgment in the matter between the parties delivered on 30/6/2015, it is claimed that Estate Officer was directed to proceed ahead with the matter and decide the same in accordance with law including that of judgment in the matter of *Dr. Preeti Bhatt*, cited supra.

6] Considered submissions.

7] Petitioners preferred Writ Petition (St) No.12296 of 2015, which was decided on 30/6/2015. This Court had an occasion to deal with the issue of jurisdiction of Estate Officer in the light of the law laid down by the Apex Court in the matter of *Dr. Suhas H. Pophale Vs. Oriental Insurance Company Limited and its Estate Officer*². This Court was sensitive to the fact that the said judgment and

² (2014) 4 SCC 657

another judgment of the Apex Court in the matter of *Ashoka Marketing vs. Punjab National Bank*³ which speaks of contradictory views, it was directed that the matters be placed before the Hon'ble Chief Justice of India for constituting three-Judge Bench for dealing with divergent views as noticed in the aforesaid judgments. As such, issue decided in the case of Dr Suhas H. Pophale, cited supra, stood referred to three-Judge Bench and the same is informed to be pending.

8] The Court then considered issue of jurisdiction raised in the matter of M/s Cafe Hornby & Excel Stores which order was subject matter of Writ Petition No.1926 of 2015 in the backdrop of judgment of Apex Court in the matter of *Dr. Suhas H. Pophale*, cited supra. This Court having regard to the order dated 17/3/2015 of the Apex Court has permitted Estate Officer to proceed ahead with the matter pending before Estate Officer, keeping right of the parties reserved to raise an issue of jurisdiction. If the proceedings are finally decided against the Petitioners, Estate Officer was permitted to go ahead with the proceedings by giving proper opportunity to the parties. The said

3 1990(4) SCC 406

order of the Apex Court dated 17/3/2015 reads as under:

“In these Petitions, in fact the ratio decided by the two-Judge Bench of this Court in the case of Suhas H. Pokhale Vs. Oriental Insurance Company Limited and its Estate Officer 2014 (2) SCC 657, is contrary to the decision of the Constitution Bench rendered in the case of Ashoka Marketing vs. Punjab National Bank – 1990(4) SCC 406. Therefore, these matters need to be heard by a three-Judge Bench.

Hence, the Registry is directed to place the record of these matters before the Hon’ble Chief Justice of India for constituting a three-Judge Bench.

Interim order to continue, if any.

Liberty is given to the parties to mention for early hearing.”

9] This court, as such, in the aforesaid order in categorical terms permitted Estate Officer to go ahead with the matter by keeping issue of jurisdiction open for being considered at the time of challenge that

may be raised to final order passed in proceedings and by granting opportunity to Petitioners to move appropriate application in the event of decision of three-Judge Bench of the Apex Court becomes available. The Court has restrained itself from causing any interference. In spite of above order, Petitioners are trying to delay proceedings before Estate Officer by moving unwarranted applications like one at Exhibits- 'P', 'H', 'L-2' and 'M' on the issue of jurisdiction.

10] Admittedly, judgment of Apex Court, in the light of the observations made by this Court in order dated 30/6/2015, is yet to be made available. It is also required to be noted that liberty is already granted to the Petitioners either to bring the order of the Apex Court to the notice of Estate Officer in case if the decision of three-Judge Bench of the Apex Court is made available or to raise a challenge based on the issue of jurisdiction in proceedings to be initiated against the final order of Estate Officer, if so decided against the Petitioners. In my opinion, interest of the Petitioners is already protected. It will be appropriate to reproduce the observations made by this Court in order dated 30/6/2015 in para 2 of its order, which reads thus :

“2. In the light of the order dated 22.04.2015

passed in the said Writ Petition No.1926 of 2015, wherein the identical observations made by the Estate Officer as made in the instant order have been set aside, it is not necessary to pass a specific order setting aside the said observations in the instant matter. It is hoped and trust that the observations made by this Court in the order dated 22.04.2015 passed in Writ Petition No.1926 of 2015 will be kept in mind by the Estate Officer whilst dealing with the proceedings that come before him. In the light of the above, there is no warrant to interdict with the order passed by the Estate Officer rejecting the application questioning his jurisdiction and seeking stay of the proceedings. By keeping the issue of jurisdiction open for being considered at the time of challenge that may be raised to the final order passed in the proceedings in the event the decision of the three judge bench of the Apex Court becomes available prior to the decision in the eviction proceedings the above Petition is disposed of.”

11] In the aforesaid backdrop, no case for interference is made out. Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)