

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5326 OF 2019

The Principal, Lakshdham High School	...	Petitioner
versus		
Engineers India Limited and Ors.	...	Respondents

Milind Gyani for the Petitioner.

S.U.Kamdar-Senior Advocate a/w Yashesh Kamdar, Priyanka Desai, Himanshu Vidhani and Shyam Dasgupte i/b Khaitan and Co. for the Respondents.

CORAM :- SMT.BHARATI DANGRE, J.

DATE :- MARCH 5, 2020

P.C. :-

1. The respondent company incorporated under the provisions of the Companies Act, 1956, initiated proceedings in respect of the property bearing Survey No.34, Hissa No.2(Part) and CTS No.156 situated at Village Dindoshi, Taluka Borivali, Mumbai seeking eviction of the respondents from the open land, which was particularly described in the plaint annexed to the application filed under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, "the Act of 1971"). In the said proceedings, the following parties were included :-

1. Lakshdham High School,
Gen.A.K.Vaidya Marg, Gokuldham,
Goregaon (E), Mumbai 400 063.

2. The Board of Trustees,
Lakshdham High School, Gen.A.K.Vaidya
Marg, Gokuldham, Goregaon (E), Mumbai
400 063.

3. The Principal,
Lakshdham High School, Gen.A.K.Vaidya
Marg, Gokuldham, Goregaon (E), Mumbai
- 400 063.

A relief was sought that the opponents be directed to evict from the said open land shown as bounded in red colour in the plan appended with the application and be further directed to demolish and remove illegally constructed wall preventing the free access of the applicants to the said open land.

2. That a notice being issued on 13th February, 2015 under the provisions of sub-section (1) clause (b)(ii) of sub-section (2) of Section 4 of the Act of 1971, the petitioner approached this Court by filing a writ petition which was numbered as Writ Petition No.8396 of 2016. The assertion in the petition, on behalf of the petitioner, is to the effect that she does not have any interest in the trust property, which is the subject matter of the application pending before the Estate Officer and she is neither the owner nor involved in the management of the trust property and on the

other hand, her claim is that she was merely an employee of the school, holding the post of “Principal”. This Court refused to entertain this writ petition, but granted liberty to the petitioner to file an appropriate application before the Estate Officer for deleting her name. On such liberty being granted, the petitioner moved an application on 5th January, 2018 seeking deletion of her name. The ground set forth is that she do not have interest in the suit property or the trust property and she is neither involved in the management or ownership of the trust property. It was also stated in the application that the trustees of the trust, who are managing the school are already on record as the opponents to the application and, therefore, she should not be unnecessarily made to suffer the litigation when she is not concerned.

3. The application filed was opposed by filing a written statement wherein a categorical statement was made that the party to the proceeding is the Principal of the School- being an employee of the school and in that capacity, the Party No.3 has been impleaded. It was also set forth that Principal being in charge of administration of day-to-day affairs of the school, is a necessary party.

4. On consideration of the counter claim of the parties, the impugned order is passed by the Estate Officer thereby rejecting

the said application and accepting the fact that being the Principal of the school, in the said capacity the Principal is supervising the affairs of the school and is in charge of the day-to-day affairs and exercise control over the students/employees/staff members and also is in occupation of the disputed property. The Estate Officer, therefore, concluded that the Principal is the necessary party for just and proper determination of the dispute. The said order is based on the legal proposition and the applicability of the provisions of the Act of 1971. The action to be initiated under the said enactment for the purpose of eviction of unauthorised occupants, contain a definition of the term “unauthorised occupation” in section 2(g), which reads thus :-

(g) “unauthorised occupation”, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises has expired or has been determined for any reason whatsoever.

5. In light of the said definition, when a person, who is in occupation of the public premises without any authority for such occupation, is included within the meaning of “unauthorised occupation” which is defined in the enactment, on the premise and an allegation contained in the application filed under the Act

of 1971 by the respondent, the order passed by the Estate Officer declining to delete the party No.3 “The Principal of Lakshdham High School” do not warrant any interference for proper and effective adjudication of the application filed under the Act of 1971. Apart from the school and the trustees of the school, the Principal, who is in charge of day-to-day affairs of the school and necessarily in occupation of the alleged premises which are owned by the applicant, is a necessary party.

6. The writ petition, without being any merit and substance, deserves to be dismissed and it is accordingly dismissed.

(SMT.BHARATI DANGRE, J.)