

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO.11325 OF 2022

M/S G. M. CONSTRUCTION THROUGH ITS PARTNER ABDUL RAHIM
GAUS MOHAMED KHOKAR
VERSUS
THE ESTATE OFFICER DEFENCE ESTATE OFFICE

...

Advocate for Petitioner : Mr Sharad V.Natu
Advocate for Respondent No.1 : Mr B.B. Kulkarni

CORAM : SANDEEP V. MARNE, J.
DATE : 2nd DECEMBER, 2022

PER COURT :

1. Petitioner is aggrieved by the Judgment and order dated 18.10.2022 passed in Regular Civil Appeal No. 149/2022 by the Principal District Judge, Ahmednagar. By that order, the order passed by the Estate Officer, Defence Estate Office, Pune Circle, Pune dated 28.06.2022 has been set aside and the proceedings are remanded back for decision afresh. The order of the Estate Officer was passed against petitioner and the order of the Principal District Judge is passed in appeal preferred by petitioner. Having succeeded before the District Court, ordinarily, there was no reason to petitioner to file the present petition. Mr Natu however submits that the Judgment and order passed by the District Judge might be construed to mean that the Court has conferred the jurisdiction on estate office to deal with the issue of tenancy between the original/successive holders of rights and the tenants, which according to Mr Natu, it does not vest in the Estate Officer. His apprehension appears to be misplaced. I do not find any specific observation or finding being recorded or the directions being given by the Principal District Judge to the Estate Officer to go into that issue.

2. In my view, only two issues are finally decided by the Principal District Judge. They are (i) whether the property in occupation of the petitioner is the "public premises" within the meaning of section 2(e) of the Public Premises(Eviction of Unauthorized Occupants) Act, 1971 and (ii) whether the Estate Officer had jurisdiction to pass the impugned order. Rest all issues have been kept open to be decided afresh by the Estate Officer.

3. Mr Natu would contend that the finding of the Principal District Judge on issue No. 5 relating to jurisdiction might be construed to mean that as if the Estate Officer has jurisdiction to decide the issue of tenancy between the original/successive holder of rights and tenant. He requests for clarification in this regard to the effect that petitioner would be free to argue the issue of lack of jurisdiction to the Estate Officer to go into that issue.

4. Accordingly, present writ petition is disposed of with a clarification that while deciding the proceedings afresh, petitioner shall be at liberty to contend before the Estate Officer that E.O. lacks jurisdiction to go into the issue of tenancy between original/successive holder of rights and tenant. All issues raised in this petition on merits are kept open. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]