IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION 13492 OF 2016
WITH
CIVIL APPLICATION 1383 OF 2019
IN
WRIT PETITION 13492 OF 2016

The New India Assurance Company Ltd. … Petitioner/ Applicant

Versus

The State of Maharashtra, through the Principal Secretary, Co-operation, Marketing and Textile Dept. and Ors. … Respondents

******

Mr. V. Y. Sanglikar for the Petitioner/Applicant.
Mr. P. P. Kakade, Govt. Pleader a/w Ms. M. S. Bane, AGP for the State-Respondents 1 and 2.

******

CORAM : ROHIT B. DEO, J.
RESERVED ON : 22nd JULY, 2022
PRONOUNCED ON : 29th JULY, 2022

JUDGMENT :-

. The petitioner is a Government company incorporated under Section 617 of the Companies Act, 1956 and is assailing the order dated 4th October, 2016 rendered by the Principal Judge, City Civil Court, Mumbai in Miscellaneous Appeal 53 of 2016 preferred by respondents 1 and 2, the State of Maharashtra and the Controller of accommodation respectively, challenging the order dated 20th June, 2016 passed by the Estate Officer appointed under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short 'P. P. Act'). By the order impugned, the learned Judge has set aside the order dated 20th June, 2016 rendered by the Estate Officer whereby the eviction of respondents 1 and 2 was ordered and the petitioner was awarded damages at the rate of Rs.5,20,000/- (Rupees Five Lakhs Twenty Thousand Only) per month w.e.f. 1st September, 2011 till the delivery of possession, along with simple interest @ 9% p.a.

2. Factual matrix :-

2(i) Petitioner is the owner of building known as New India Assurance Building which is situated at 87, M. G. Road, Fort, Mumbai – 400 001.

2(ii) Respondent 2 requisitioned the premises admeasuring 2600 sq. ft. in area situated on the 3rd floor of the New India Assurance Building and allotted the same to a respondent 1-State of Maharashtra on 10th July, 1972. As tenant, respondent 1 agreed to pay monthly rent which then was Rs.3,093.75/- (Rupees Three Thousand Ninety Three and Seventy Five Paise

Only) excluding taxes and outgoings.

2(iii) Petitioner contends that respondent 1 was habitually irregular in payment of rent, the petitioner further needed the premises for self-occupation, and on such premise served notice of termination of tenancy dated 28th June, 2011 and then preferred composite application seeking eviction, arrears of rent and damages for unauthorized occupation invoking the provisions of P. P. Act.

2(iv) The Estate Officer issued show-cause-notice dated 21st February, 2012 under Sections 4 and 7 of the P. P. Act. Respondents 1 and 2 filed their written statement, the parties filed compilations of documents, inspected the documents and led evidence. While the petitioner examined Mr. T. Jayaraman, Deputy Manager and Mr. R. Kejriwal, Valuer. Respondents 1 and 2 examined Mr. Bhaye and Mr. Shivaji Dhamnkar.

2(v) During the pendency of the proceedings, respondent 1 cleared the arrears of rent.

2(vi) The Estate Officer rendered order dated 20th June, 2016 and the relief granted to the petitioner is noted supra.

2(vii) Respondents 1 and 2 challenged the order of the Estate Officer in Miscellaneous Civil Appeal 53 of 2016 which is allowed by the learned Principal Judge, City Civil Court, Mumbai (Appellate Judge) *inter-alia* holding that the State of Maharashtra cannot be evicted under the P. P. Act.

3. It would be appropriate to note the findings recorded by the Estate Officer.

3(i) The Estate Officer held that the premises are public premises within the meaning of Section 2(e) of the P. P. Act.

3(ii) The Estate Officer rejected the contention that eviction can be ordered only under the provisions of the Maharashtra Rent Control Act, 1999. The Estate Officer *inter-alia* referred to the bar of jurisdiction under Section 15 of the P. P. Act.

3(iii) Considering the objection of the State of Maharashtra on the premise that the tenancy is protected under the Maharashtra Rent Control Act, 1999, the Estate Officer referred to various decisions including the constitution bench decision of Supreme Court in ***Ashok Marketing Ltd. and Anr. v/s. Punjab National Bank and Ors., AIR 1991 SC 855*** and held that since the P. P.

Act overrides the provisions of the Rent Act, the eviction cannot be opposed on the ground that respondent 1 is a protected tenant.

3(iv) The Estate Officer then recorded a finding that the termination notices issued by the petitioner are valid and that the requirements of Section 106 of the Transfer of Property Act, 1882 are satisfied.

3(v) The Estate Officer then held that respondents are in unauthorized occupation, since the authority to occupy the public premises is legally terminated.

3(vi) The Estate Officer then considered the evidence on record painstakingly and recorded a finding that the requirement of self-occupation pleaded by the petitioner is sufficiently proved.

3(vii) The Estate Officer then held that respondent 1 is liable to pay arrears of rent and interest as claimed and is further liable to pay damages and interest. Findings are rendered on the basis of the evidence adduced on record, *inter-alia* the evidence of the valuer Mr. Kejriwal.

4. Perusal of the judgment impugned reveals that the appeal is allowed primarily on the premise that the Government cannot be

evicted under the provisions of P. P. Act.

4(i) The learned Appellate Judge notes the submission of the learned counsel who represented the petitioner herein – respondent, that the words in the statute must be finally read and understood in the context of their literal meaning and that the P. P. Act does not expressly or by necessary implication, exclude the Government from its sweep.

4(ii) The learned Appellate Judge considered the mischief rule in the case ***Heydon's case (1584) 76 ER 637*** and held that if the provisions of the P. P. Act are read or understood as to render the Government vulnerable to eviction, the result shall be unintended absurdity.

4(iii) The learned Appellate Judge then considered certain decisions *inter-alia* the judgments of the Delhi High Court in ***Nisha v/s. Punjab National Bank, AIR 2000 Delhi 439***, Madras High Court in ***B. Lakshmi v/s. M/s. Bharat Petroleum Corporation***, the decision of Punjab and Haryana High Court in ***M/s. Bharat Petroleum Corporation Ltd. and another v/s. Union of India and others, AIR 1992 Punjab and Haryana 248*** and the decision of the Supreme Court in ***Central Bureau of Investigation and others v/s. Keshub Mahindra and others, (2011) 6 SCC 216***, which were cited by the contesting parties.

4(iv) In view of the finding that the Government cannot be evicted under the P. P. Act, the learned Appellate Court did not dilate on the other issues raised by the contesting parties.

4(v) The leaned Appellate Judge held that an enquiry on the factum of default and the requirement of the public premises for personal occupation would not be necessary, particularly, since the reasons spelt out in the notice of eviction are not really justiciable. The learned Appellate Judge relied on the decision of Supreme Court in ***Jiwan Dass v/s. Life Insurance Corporation of India and another, 1994 Supp(3) SCC 694***.

5. The learned counsel for the petitioner Mr. Sanglikar launched a frontal attack on the finding recorded by the learned Appellate Judge invoking the ***Hydon's*** rule, that the State Government cannot be evicted under the provisions of the P. P. Act. Mr. Sanglikar would vehemently argue that the finding falls foul of the well recognized principle of interpretation of statue that the intention of the legislature

must be ascertained on the principle of literal construction unless such interpretation results in absurdity. Mr. Sanglikar, would argue that the provisions of the P. P. Act clearly postulate that any person in unauthorised occupation of public premises can be evicted and that there is no reason to exclude the State Government from the literal or natural meaning of the word 'any person'. Mr. Sanglikar, would invite my attention to plethora of decisions to buttress the submission that the learned Appellate Judge misdirected himself in holding that if Government is included within the sweep of the expression 'any person', the result will be absurd. In rebuttal, Ms. Bane, Asst. Government Pleader would submit that since the word 'any person' is not defined in the P. P. Act, Section 3(42) of the General Clauses Act will have to be looked into to ascertain whether Government is included in the expression 'any person' in unauthorized occupation.

6. I have noted the decisions to which the attention of the learned Appellate Judge was invited. In fairness to the learned Appellate Judge, one decision which could have been considered, was not brought to his notice by the contesting parties, which is the decision in ***Indian Petro Chemicals Corporation Limited v/s. Air India Limited and Ors., 2013(2) Bom.C.R. 161*** which is authored by S. C.

Dharmadhikari, J.

7. The question which was considered and answered in ***Indian Petro Chemicals Corporation Limited*** (supra) was whether a Government company incorporated under the Companies Act, 1956 could be evicted under the provisions of the P. P. Act.

7(i) Notably, the P. P. Act was amended by Act 61 of 1980 and Act 35 of 1984 and the definition of 'public premises' in Section 2(e) was amended to include any premises belonging to, or taken on lease by, or on behalf of, any company as defined in Section 3 of the Companies Act, 1956 in which not less than 51% of the paid share capital is held by the Central Government or any company which is a subsidiary of such Government company. The premises belonging to, or taken on lease by, or on behalf of, certain other juristic entities and persons were also included in the definition of public premises.

7(ii) Section 2(g) which defines unauthorized occupation in relation to any public premises reads thus :-

"2(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."

7(iii) S. C. Dharmadhikari, J. considered the provisions of Section 15 of the P. P. Act, which reads thus :-

"15. Bar of jurisdiction.— No Court shall have jurisdiction to entertain any suit or proceeding in respect of—

(a) the eviction of any person who is in unauthorised occupation of any public premises; or

(b) the removal of any building, structure or fixture or goods, cattle or other animal from any public premises under section 5-A; or

(c) the demolition of any building or other structure made, or ordered to be made under section 5-B; or

(d) the arrears of rent payable under sub-section (1) of section 7 or damages payable under sub-section (2), or interest payable under sub-section (2A) of that section; or

(e) the recovery of—

(i) costs of removal of any building, structure or fixture or goods, cattle or other animal under section 5-A, or

(ii) expenses of demolition under section 5-B, or

(iii) costs awarded to the Central Government or statutory authority under sub-section (5) of section 9; or

(iv) any portion of such rent, damages, costs of removal, expenses of demolition or costs awarded to the Central Government or the Statutory authority."

7(iv) S. C. Dharmadhikari, J. then considered the submission that while a Government company was entitled to seek eviction under the P. P. Act, it is not vulnerable to eviction on the premise that it is an unauthorized occupant. In paragraph 22 of the judgment, S. C. Dharmadhikari, J. refers to and discusses several decisions of the Supreme Court which interpreted the word 'person'. Certain passages in the decision ***M/s. Jain Ink Manufacturing Company v/s. Life Insurance Corporation of India and Anr., AIR 1981 SC 670*** are noted.

7(vii) In the context of the issue involved, paragraph 62 in ***Samantha v/s. Government of Andhra Pradesh, AIR 1997 SC 3297***, may be of same significance and relevance and the said passage reads thus :-

"62. In Superintendent and Legal Remembrancer, State of West Bengal v. Corporation of Calcutta, (1967) 2 SCR 170 : AIR 1967 SC 997 a Bench of nine Judges of this Court was to consider whether the State of West Bengal, when it was carrying on trade, as owner and occupier of the market at Calcutta, without obtaining the licence, was bound by the Calcutta Municipality Act or, by necessary implication, was exempted to obtain licence. A complaint against the State, for its failure to obtain licence was filed by the Municipal Corporation. It was contended that the State is not a person under section 218 of the said Act. Per Majority, it was held that the Common Law rule of construction that the Crown is not, unless expressly named or clearly intended, bound to be a State, was held to be not acceptable as a rule of construction. It was held that the archaic rule based on prerogative and protection of the Crown has no relevance to a democratic republic. It is inconsistent with the rule of law based on the doctrine of equality and introduces conflicts and anomalies. The normal construction, viz., that an enactment applies to citizens as well as to the State, unless it expressly or by necessary implication exempts the State from its operation, steers clear of all the anomalies and is consistent with the philosophy of equality enshrined in the Constitution. Under the Act there is a distinction between fine imposed under section 537 and under section 541 of the Act, the fines under section 537 are in respect of offences enumerated therein they certainly go to the coffers of the States. In respect of such offences it may be contended that, as the fines paid reach the State itself, there is an implication that the State was not bound by the sections enumerated therein, for a person who receives the fine, cannot be the same person who pays it. This incongruity may lead to the said necessary implication. Another Bench of nine Judges in State Trading Corporation of India Ltd. v. The Commercial Tax Officer; AIR 1963 SC 1811 at 1817 per majority interpreted the word 'citizen' in a broader perspective. In Union of

India v. Jubbi, AIR 1968 SC 360 at 362 a three-Judge Bench had held that a statute applies to State as much it does to a citizen, unless, it expressly or by necessary implication, exempts the State from its operations. If the Legislature intended to exclude the applicability of the Act to the State, it could have easily stated in section 11 itself or by a separate provision that the Act was not to be applied to the Union or to the lands held by it. In the absence of such a provision, in a constitutional set up like the one we have in this country, and of which the overriding basis is the broad concept of equality, free from any arbitrary discrimination, the presumption would be that a law of which the avowed object is to free the tenant of landlordism and to ensure to him security of tenure would bind all landlords irrespective of whether such a landlord is an ordinary individual or the Union. In that case, it was contended that Abolition of Big Landed Estates and Land Reforms Act, 1953 and section 11 thereof does not apply to the land held by the Government. This Court rejected that contention. It would, therefore, be settled law that the question whether or not the word 'person' used in a statute would include the State has to be determined with reference to the provisions of the Act, the aim and its object and the purpose the Act seeks to subserve. There is no reason to consider the word 'person' in a narrow sense. It must be construed in a broader perspectivity, unless the statute, either expressly or by necessary implication, exempts the State from the operation of the Act as against the State and would include "State Government". Property of the State how dealt with under the Constitution."

7(viii) Paragraph 41 and 42 in ***Indian Petro Chemicals Corporation Limited*** (supra) reads thus :-

"41. If the basis of the reasoning is that Public Premises (Eviction of Unauthorised Occupants) Act applies to the premises and unauthorised occupants of public premises, then, these observations and findings in the Delhi High Court judgment, with respect, do not assist Mr. Presswala. I am mindful of the fact that if I hold that the Act is applicable, even to evict unauthorised occupants such as public sector corporation, Government or a statutory authority, from public premises, proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971 can be initiated but indiscriminate use of powers of eviction under the Act have been controlled by the Act itself and by construing the provisions of the same as subject to the constitutional mandate enshrined in Articles 14 and 21 of the Constitution. Therefore, indiscriminate and frequent use of the Act will be controlled, regulated and checked by not only the guidelines issued by the Central Government but equally by the law laid down by the Supreme Court underlying the mandate of Article 14 of the Constitution of India and the test of reasonableness, fairness and non-arbitrariness in the state action. In these circumstances, it is not as if the Act would be resorted to

> *oust or evict another public sector Corporation by merely putting an end to its authority to use and occupy the premises. It is always presumed that when power is conferred in highly placed public officials and premises are held in trust for the public, then, the Government and equally such high powered officials would be mindful of their duty and mandate and will not overstep or exceed it. Therefore, in a given case, if these limits are transgressed and the action is found to be unreasonable and violative of the constitutional mandate, it can always be interfered with and even struck down.*
>
> *42. Once the above view is taken, then, there is no merit in this petition because, all other contentions are based on the facts before the Estate Officer/appellate authority. Both of them have concurrently found that the eviction of the petitioner from the premises is justified not only because the authority to use and occupy the premises has come to an end but also because the premises are required by Air India. The argument that Air India is now going to profiteer by letting out the premises at higher market rate, can be taken care of by holding that in this case the orders under challenge are of eviction from the public premises and which orders have been passed long time back. While it is true that the subsequent events may be brought to the notice of this Court while scrutinising these orders, but what I find that beyond producing a paper cutting nothing has been established much less proved for me to come to a conclusion that the Act has been resorted to arbitrarily, unreasonably and unfairly in the case of petitioner. The argument that there is no security threat would mean sitting in judgment over the opinion of those in charge of the maintenance of the premises and safeguarding them. Once they find that the safety and security of the premises at the relevant time, required minimum number of tenants and visitors in the building, then, it is not for this Court to substitute their views and opinion in writ jurisdiction. Even if another view is possible, I cannot disturb this concurrent finding of fact as desired by Mr. Presswala."*

7(ix) The ultimate conclusion in ***Indian Petro Chemicals Corporation Limited*** (supra) is that a Government company is also vulnerable to eviction under the provisions of P. P. Act.

8. The substratum of the submission canvassed by the learned AGP is that while a Government company may be evicted under the provisions of the P. P. Act, the Government is not vulnerable to such eviction. The learned AGP would argue that ***Indian Petro Chemicals***

Corporation Limited (supra) can be distinguished since the expression ‘any person’ in Section 3(42) of the General Clauses Act covers company and corporation and conspicuously excludes the Government. While I note that definition of the expression ‘person’ in the General Clauses Act is not an exhaustive definition, which is apparent from the word ‘includes’ and that recourse can be taken to the General Clauses Act only if the meaning of an expression cannot be ascertained on the basis of the relevant statutory provisions in the statute, in view of the order which I propose to make, I would refrain from making any positive observation.

9. It appears to me, that to make a distinction between Government company and Government, who are treated as equals and are placed on the same pedestal, insofar as the entitlement to seek eviction of the premises, while answering the question of vulnerability to eviction, may be incongruous. Further, I am of the considered view, that the invoking of the ***Hydon’s*** rule by the learned Appellate Judge and to exclude the Government from the scope and ambit of the expression ‘any person in unauthorized occupation’ raises an extremely debatable issue. The P. P. Act does not expressly exclude the Government from the definition of ‘any person in unauthorized occupation’. There is no

gainsaying that Government may, in the context of the statutory provisions be held not covered by the expression ‘any person’ by necessary implication. However, the seminal issue has not received any depth consideration which it deserved, in appeal.

10. Considering that the question of law was extensively debated in lengthy hearing, I was inclined to decide the question whether the State Government was included in the expression ‘any person in unauthorized occupation’ employed in Section 2(g) of the P. P. Act. However, I have been dissuaded, in view of two circumstances. The first is that Mr. Sanglikar urged that the matter be remitted and the question arising be decided by the learned Appellate Judge afresh. The second circumstance and reason is that in any event, even if I were to decide the question of law, the matter will have to be necessarily remitted since the learned Appellate Judge has not considered the other issues involved. Illustratively, the legality and quantum of the damages, will have to be addressed not by the writ Court but by the learned Appellate Judge on the basis of the evidence adduced. The learned Appellate Judge rested by concluding that the eviction proceedings are not maintainable against the Government and on such premise declined to look into the other aspects involved.

11. Be that as it may, the judgment impugned deserves to be set aside and I order accordingly.

12. The matter is remitted to the learned Appellate Judge who shall decide the appeal afresh, after hearing the parties and within the three months.

13. The learned Appellate Judge shall decide all issues involved including the crucial issue whether the expression ‘any person in unauthorized occupation’ employed in Section 2(g) of the P. P. Act excludes the Government.

14. Till the decision in appeal, the possession of respondent 1 shall stand protected.

15. Petition is disposed of, in the aforestated terms.

16. Pending Civil Application, if any, shall stand disposed of.

17. The petitioner – the New India Assurance Company Ltd. is permitted to move an appropriate application for interim relief in the Appellate Court, which shall be considered on its own merit.

[ROHIT B. DEO, J.]