

Nikita

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

WRIT PETITION NO.6593 OF 2022

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Life Insurance Corporation of India ... Petitioner
V/s.
Atul Chandulal Doshi and Anr. ... Respondents

Mr. V.Y. Sanglikar, for the Petitioners.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 30, 2023

P.C.:

1. By this petition, under article 227 of Constitution of India, the petitioner challenging order dated 20th January 2022, in Miscellaneous Appeal No.130 of 2013, setting aside order passed by Estate Officer dated 31st October 2013 directing eviction of occupant.

2. The petitioner is the owner of the scheduled premises. By notice dated, 10th December 2009, the petitioner terminated tenancy of original occupant Smt. Jaswanti Doshi. She filed Writ Petition No.171 of 2010, challenging notice of termination dated 10th December 2009. This Court by order dated 16th December 2010 permitted the petitioner to initiate action under the provisions of Public Premises Eviction Act, 1971. However, it is directed that final order in the said proceedings shall not be passed. Accordingly, the petitioner on 12th August 2010, filed case

No.306 of 2010 before the Estate Officer having power of the eviction under the provisions of the said Act. On 6th June 2011, Writ Petition No.171 of 2010 was filed by the original occupant and was dismissed as withdrawn. On 20th April 2012, original occupant Smt.Jaswanti Doshi died. On 15th June 2012, legal representatives of original occupant were brought on record. It is pertinent to note that the address of legal representative mentioned in the cause title is “13 Asian Court Napean Sea Road Mumbai”. It is also not in dispute that constituted address of legal representatives of original occupants contested proceedings before the Estate Officer. The Estate Officer by order dated 31st October 2013, directed the eviction of legal representatives of original occupant.

3. The legal representative of original occupant challenged the order of Estate Officer by Miscellaneous Appeal No.130 of 2013. The appeal was filed by only one legal representative that is Mr. Atul Chandulal Joshi. The Principal Judge City Civil Court by the impugned order allowed the appeal. The City Civil Court allowed the appeal on following grounds:

- a) Guidelines dated 30th May 2002, obtained in clause dated 8th June 2002, were not complied.
- b) Notice of termination dated 10th December 2009, was not validly served.
- c) Petitioner failed to prove that the premises are required for bonafide use.

4. Learned counsel for the petitioner invited my attention to the

written statement filed by the occupant, wherein no details of tenancy are given. He submitted that in the absence of proof of tenancy, the possession of occupant could not have been protected. He submitted that the guidelines dated 30th May 2002 are advisory in nature and non compliance of such guidelines would not confer right on the occupant. There is no requirement of proving requirement for bonafide use in the absence of any statute requiring petitioner to prove such requirement. He submitted that the notice of termination was subject matter of challenge before this Court in Writ Petition No.171 of 2010, which has attained finality. Therefore, impugned order deserves to be quashed and set aside.

5. This Court on 10th June 2022, issued notice for final disposal to the respondents. On 30th June 2022, petitioner filed affidavit of service stating that the Respondent No.1 is served by E-mail, and speed post with postal track report “Item Delivery Conformed”. In furtherance of order dated 17th July 2023, the petitioner again served respondent No.1 and filed affidavit of service on 27th July 2023, annexing receipt dated 6th August 2022, indicating track consignment report “Item Delivery Confirmed”. Despite such service, respondent No.1 has failed to appear on 11th August 2023, 24th August 2023, and 29th August 2023 and today also.

6. In so far as the applicability of guidelines is concerned that the Apex Court in the case of **Suhas Pophale Vs. Oriental Insurance Company Limited and its Estate Officer** reported in (2014) 4 SCC 657, held that the guidelines are advisory in nature but cannot be ignored however in the facts of the case, the petitioner failed to

adduce evidence to show period of his tenancy. The judgment in case of **Suhas Pophale** supra would apply to only those cases where claim of tenancy is prior to 1958. However, in the present case in the absence of material to indicate starting point of tenancy, the City Civil Court could not have recorded a finding of breach of guidelines for setting aside or passed by Estate Officer.

7. Moreover, the ratio in the case of **New Insurance Assurance Company Vs. Nusli Neville Wadia** reported in 2008(3) SCC 279, still holds the field wherein the Apex Court has held that the guidelines are advisory in nature.

8. The next ground is absence of proof of service of notice of termination. As observed earlier, the original occupant herself had challenge the notice of termination by Writ Petition No.171 of 2010, which came to be dismissed on 6th June 2011, therefore, City Civil Court could not have set aside the order of Estate Officer on the ground that the notice of termination was not served on the occupant.

9. The last ground which the City Civil Court held in favour of occupant was proof of requirement for bonafide use is not borne out of provisions of any statute. As has been held by earlier part of this order, the guidelines referred are not applicable, to the petitioner. It was not necessary for the petitioner to prove its requirement for bonafide use as provisions of Public Premises Eviction Act, 1971 do not make it mandatory for the applicant to prove such ground.

10. Therefore, in my opinion, the City Civil Court was not

justified in allowing the appeal. On overall consideration of the matter, the impugned order cannot be sustained. Hence following order:

a) The impugned judgment and order passed by Principal Judge City Civil Court Mumbai dated 20th January 2022 in Miscellaneous Appeal No.130 of 2013, is quashed and set aside.

11. The writ petition is disposed of.

(AMIT BORKAR, J.)