IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5373 OF 2024

Ashok Murlidhar Utikar
VERSUS
The Chief Officer Municipal Council

WITH
WRIT PETITION NO. 5385 OF 2024

Haribhau Shankarrao Toke Died Thorugh Lr Bhausaheb Haribhau Toke
VERSUS
The Chief Officer Municipal Council Pathri

WITH
WRIT PETITION NO. 5389 OF 2024

Mohammad Bin Syed Chaus Died Through Lrs Shabana Mohd Bin Kileb And Others
VERSUS
The Chief Officer Municipal Council Pathri

WITH
WRIT PETITION NO. 5390 OF 2024

Mohd Azhar Mohd Idris
VERSUS
The Chief Office Municipal Council Pathri

WITH
WRIT PETITION NO. 5393 OF 2024

Chandrakala Shivaji Chinchane
VERSUS
The Chief Officer Municipal Council Pathri

WITH
WRIT PETITION NO. 5384 OF 2024
Namdeo Bapurao Chinchane
VERSUS
The Chief Officer Municipal Council

WITH
WRIT PETITION NO. 5386 OF 2024

Shivaji Bapurao Chinchane
VERSUS
The Chief Officer Municipal Council Pathri

WITH
WRIT PETITION NO. 5383 OF 2024

Mohd Yunus Halimji Ansari
VERSUS
The Chief Officer Municipal Council

WITH
WRIT PETITION NO. 5382 OF 2024

Laxman Pralhad Khatri
VERSUS
The Chief Officer Municipal Council Pathri

WITH
WRIT PETITION NO. 5392 OF 2024

Hanuman Ravan Ambegaonkar
VERSUS
The Chief Officer Municipal Council Pathri

WITH
WRIT PETITION NO. 5374 OF 2024

Anand Devrao Shinde Died Through Lrs Pravin Anantrao Shinde
VERSUS
The Chief Officer Municipal Council Pathri

WITH
WRIT PETITION NO. 5379 OF 2024

Mohd Babar Mohd Idris
VERSUS
The Chief Officer Municipal Council Pathri

WITH
WRIT PETITION NO. 5381 OF 2024

Mohd Akbar Abdul Gaffarr Bagwan
VERSUS
The Chief Officer Municipal Council Pathri

WITH
WRIT PETITION NO. 5391 OF 2024

Masoom Shaikh Amin
VERSUS
The Chief Officer Municipal Council Pathri

WITH
WRIT PETITION NO. 5377 OF 2024

Babulal Ramgopal Mantri Died Through Lrs Ramsukh Babulal Mantri
VERSUS
The Chief Officer Municipal Council Pathri

WITH
WRIT PETITION NO. 5378 OF 2024

Shaikh Rasool Shaikh Ashraf
VERSUS
The Chief Officer Municipal Council Pathri

WITH
WRIT PETITION NO. 5376 OF 2024

Ram Pralhad Khatri
VERSUS
The Chief Officer Municipal Council Pathri

WITH
WRIT PETITION NO. 5380 OF 2024
Murlidhar Ramnath Mundada Died Through Lrs Sanjaykumar Ratanlal Mundada
VERSUS
The Chief Officer Municipal Council Pathri

WITH
WRIT PETITION NO. 5387 OF 2024

Subhash Munjaji Bedre
VERSUS
The Chief Officer Municipal Council Pathri

WITH
WRIT PETITION NO. 5388 OF 2024

Badroddin Mohammad Khajamiya
VERSUS
The Chief Officer Municipal Council Pathri

WITH
WRIT PETITION NO. 5375 OF 2024

Vithal Kondiba Kawale Died Through Lrs Rukhmini Vithal Kawale
VERSUS
The Chief Officer Municipal Council Pathri

Mr. M. B. Kolpe, Advocate holding for Mr. V. B. Deshmukh, Advocate for the Petitioners.
Mr. M.P. Tripathi, Advocate for the Respondent.

CORAM : R. M. JOSHI, J.

RESERVED ON: 10th JUNE, 2024
PRONOUNCED ON : 1st JULY, 2024.

PER COURT :

1. These Petitions involve issue for determination as to whether a District Judge who has put in less than 10 years of judicial

service can entertain and decide appeal under Section 7 of Bombay Government Premises (Eviction) Act, 1955 (for short 'the Act').

2. Petitioners filed appeals under Section 7 of the Act against order passed by Competent Authority directing eviction of about 30 persons, in a proceedings filed by Municipal Council, Pathri. Principal District Judge, Parbhani, assigned those appeals to District Judge – 4 (Now District Judge -3) for its decision. During the pendency of these appeals an application was moved before the Principal District Judge, Parbhani, for transfer under Section 24 of the Code of Civil Procedure (for short 'CPC') of these appeals pending on the file of District Judge – 3 to the Court of Principal District Judge, Parbhani, or to any Judicial Officer with 10 years standing. Since the said applications were rejected by order dated 06.03.2024, these Petitions.

3. Learned counsel for the Petitioners submits that the learned Principal District Judge, Parbhani fell in error in rejecting the applications for transfer in ignorance of the provisions of Act and that the Appellate Authority being persona designata, only the Principal District Judge of the District or other Judicial Officer of not less than

10 years of standing could entertain such appeal. To support his submission, he drew attention of the Court to the provisions of Section 7 of the Act which according to him, indicate that the District Judge who is renamed as Principal District Judge, only could entertain appeals even though not having 10 years standing but other District Judges can-not. It is further submitted that admittedly District Judge – 3 who is seized with these appeals has not completed 10 years of judicial services and therefore, he has no jurisdiction to entertain appeals.

4. Learned counsel for the Respondent opposed the said submission by contending that any District Judge would be competent to decide these appeals under Section 7 of the Act as Appellate Authority, in absence of any amendment to the said provision. To support his submission, he placed reliance on the judgment of Delhi High Court in case of Young Men S. Tennis Club versus NDMC, **2022 SCC OnLine Del 3341**.

5. There is no dispute about the fact that the learned District Judge – 3, Parbhani does not have 10 years of standing as a Judicial Officer. Petitioners, therefore, relying upon Section 7 of the

Act sought to contend that District Judge – 3 would be a "Judicial Officer" as contemplated by second part and since he has less than 10 years standing, he would not have jurisdiction to entertain such appeals.

6. For the purpose of deciding the controversy involved in these Petitions, it would be necessary to take into consideration the relevant provisions of the Act as well as the provisions of Maharashtra Civil Court Act (for short 'Civil Court Act').

Section 7 of the Act reads thus :

> 7. (1) An appeal shall lie from every order of the competent authority, made in respect of any Government premises, under section 4 or section 5 to an appellate officer who shall be the District Judge of the district in which the Government premises are situate, or such other judicial officer in that district, being, a judicial officer of not less than ten years' standing, as the District Judge may designate in this behalf.
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> (2) xxx
>
> (3) xxx
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> (4) xxx
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> (5) xxx

7. According to this provision, an appeal would lie from every order of the competent authority under Sections 4 or 5 to the Appellate Officer who shall be the District Judge of the District or such other Judicial Officer in that District, being a Judicial Officer of not less than 10 years standing, who may be designated by the District Judge in this behalf.

8. In order to ascertain the powers of District Judges and other Judges in the State of Maharashtra, it would be relevant to take into consideration the provisions of Civil Courts Act. Section 5 of the said Act states that there shall be in each District a District Court presided over by a Judge to be called as District Judge. There is provision of appointment of Joint Judge under Section 12 and Assistant Judge under Section 14 of Civil Courts Act. By virtue of amendment to these provisions in 1984, nomenclature of these posts is changed to 'Joint District Judge' and 'Additional District Judge', respectively. Thus, Section 12 permits the State Government to appoint a Joint District Judge who shall be invested with powers co-extensive and concurrent jurisdiction with the District Judge except that he shall not keep a file of civil suit and shall transact civil business only as he may receive from the District Judge. This

indicates that under Civil Courts Act, apart from District Judge, there existed posts of Joint District Judge and Additional District Judge. According to Section 14, one or more Additional District Judges can be appointed in a District. Section 19 of the Act empowers the State Government by notification in the Official Gazette to invest all or any power of a District Judge within a particular part of a District. Thus, Civil Courts Act not only provides for appointment of District Judge but Joint and Additional District Judges as well and they hold co-extensive powers and concurrent jurisdiction with the District Judge.

9. After acceptance of recommendations of Justice Shetty Commission, there is merger of posts in cadre of District Judge in the District Judiciary. Thereafter, the nomenclature of District Judge has been changed to Principal District Judge. Posts of Joint District Judge as well as Additional District Judges are replaced by the District Judges. Though Maharashtra Civil Services Rules, 2008 are amended in exercise of powers conferred by Articles 233 and 234 and proviso to Article 309 of the Constitution of India read with Article 235, State of Maharashtra in consultation with High Court whereby (i) District Judges (ii) Additional District Judges (iii) Principal Judge,

Additional Principal Judge and Judge of City Civil Court and Sessions Court Mumbai are redesignated as 'District Judges'. Surprisingly, though such change is effected, no amendment to that extent is yet effected by the appropriate Government to Civil Courts Act. Similarly no amendment is effected in Section 7 of the Act. At present, District Judges exercise all judicial powers exercised by Principal District Judge except control and inspection over Courts in District and power to transfer/assign proceedings to Courts/Judges. Now the question arises as to when the posts of Joint District Judge and Additional District Judges were conferred similar powers as exercisable by the Principal District Judge except for administration and power to withdraw and assign matters to the other Courts, why same powers/jurisdiction cannot be exercised by District Judges. The notifications issued by the Government clarify this situation. One of such notifications issued by the Law and Judicial Department with regard to the appointment of District Judges is reproduced below :-

NOTIFICATION

Law and Judiciary Department,
Madam Kama Road,
Hutatma Rajguru Chowk,
Mantralaya, Mumbai 400 032,
Dated the 9th July, 2012.

No CRC 1309/170/(30)/XII. - In exercise of the powers conferred by section 19 of the Bombay Civil Courts Act, 1869 (Act No. XIV of 1869), the Government of Maharashtra hereby directs that, with effect from the 22th day of July, 2012. -

(a) there shall be a Court of District Judge at Vaijapur in Aurangabad District and the said Court shall be presided over by the District Judge – 1.

(b) the local limits of the ordinary jurisdiction of the said court shall be co-extensive with the existing jurisdiction of Court of Civil Judge, Senior Division, Vaijapur, Civil Judge, Junior Division, Vaijapur and Civil Judge, Junior Division, Vaijapur and Gangapur in Aurangabad District.

(c) all the powers of the Principal District Judge, Aurangabad shall vest in the said District Judge -1, except those vested in the Principal District Judge, under section 9 of the said Act and his power of assign to District Judge, at Aurangabad of withdraw unto himself or to assign to another Court of competent jurisdiction, such matters as he thinks fit.

By order and in the name of the
Governor of Maharashtra

(xxx)
Solicitor (M.L.) -cum-Joint Secretary"

10. A conjoint reading of provisions of Section 12, 14 and 19 of the Civil Court Act coupled with the Notification issued under Section 19 of the Act, unquestionably shows that judicial powers and jurisdiction exercised by the District Judge (now Principal District Judge) vest with District Judges except for the control and inspection

of Courts and power to transfer proceedings from one Court to another. No exception therefore can be made thereto to enable him to act as Appellate Officer under Section 7 of the Act, for want of specific prohibition/exception made to by legislature.

11. Basic rule of interpretation/construction of any statute is to avoid absurd results. If it is interpreted that the term "Judicial Officer" as contemplated in Section 7 of the Act covers District Judge and therefore a District Judge, who has not put in 10 years of judicial service, then he would not have authority/power to entertain said appeal. In a given case a District Judge who has completed 9 years of Judicial service would not be allowed to entertain the appeal whereas even a Civil Judge Junior Division who has completed 10 years of service could do so. This would lead to a absurd situation as the District Judge who is appellate authority over the orders passed by the Civil Judge Junior Division and Civil Judge Senior Division (to the extent of pecuniary jurisdiction of the District Court) would not be permitted to entertain appeal under Section 7 of the Act unless he has 10 years judicial standing. In considered view of this Court, even while interpreting the provisions of Section 7 to the extent of the term 'Judicial Officer', no interpretation would be permissible which

would create such absurd situation. Having regard to the nature and scope of the proceedings as contemplated by Section 7 of the Act and powers exercised by District Judges at par with Principal District Judge, term 'Judicial Officer' must be held to be any Judicial Officer other than then Joint and Additional District Judge and present District Judges. Thus, for a District Judge, condition of 10 years of judicial service would not apply to enable him to act as appellate officer under Section 7 of Act. It is, therefore, held that District Judge 3, Parbhani has authority/power to entertain and decide appeals under Section 7 of the Act. In the result, the impugned order passed by the Principal District Judge, Parbhani does not deserve any interference.

12. Learned counsel for the Respondents submits that the Petitioner never raised objection to the proceedings before District Judge -3 for substantial period and the said objection is now raised with the intention to protract the said proceedings. It is submitted that having regard to the nature of the proceedings it would be in the interest of justice that the concerned Court directs to decide the said proceedings expeditiously.

13. It is not in dispute that these proceedings were pending before the same Judicial Officer for 2 years or so and that learned Judge has granted interim protection to the Petitioners herein. It is only when these appeals were due for hearing, objection to the authority of Judge is raised. This Court, therefore, finds substance in the contention of Respondent that such objection is raised in order to delay the proceedings. Having regard to the nature and scope of the proceedings, it is possible for the Court to decide the same expeditiously. In such circumstances, learned District Judge – 3 to decide proceedings within a period of six (06) months from date of passing of this order. Registry to communicate this order to the learned Judge for its compliance.

14. Petitions stand dismissed in above terms.

(R. M. JOSHI)
Judge

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