

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3030 OF 2025

Anita Bharat Shah

...Petitioner

vs.

United India Insurance Company Limited and Ors. ...Respondents

Mr. Janak Dwarkadas, Senior Advocate a/w. Mr. Karl Tamboly, Mr. Jehangir Jejeebhoy, Mr. Parag Khandhar and Ms. Anaheeta Verma i/b. DSK Legal, for the Petitioner.

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

CORAM : N. J. JAMADAR, J.

DATE : MARCH 19, 2025

P.C:

1. The petitioner takes exception to an order dated 31st January, 2025 passed by the learned Principal Judge, City Civil Court, Mumbai on an application (Exh.8) for stay to the execution and operation of the judgment and order dated 31st December, 2024 passed by the Estate Officer in Misc. Appeal No. 7 of 2025.

2. United India Insurance Company Limited (R1) filed an application before the Estate Officer, under sections 5 and 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (Public Premises Act) to evict the petitioner from the premises situated on the second and fourth floor of Union Co-operative Building No. 23, Sir P.M. Road, Fort, Mumbai (public premises) and for damages for the unauthorised occupation of the said public premises.

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3. By a judgment and order dated 31st December, 2024, the Estate Officer directed that the petitioner, the heirs and legal representatives of Dr. Jayant Gajjar were in unauthorised occupation of the public premises and ordered them to vacate the public premises. The petitioner and the co-opponents were also jointly and severally directed to pay the damages @ 5,08,670/- p.m. w.e.f. 1st August, 2005 along with simple interest @ 7% p.a. till delivery of possession of the said premises.

4. Being aggrieved, the petitioner preferred an appeal under section 9 of the Public Premises Act before the Principal Judge, City Civil Court. The petitioner sought stay to the execution and operation of the said order.

5. By the impugned order, the learned Principal Judge was persuaded to partly allow the application directing stay to the execution of the order of delivery of possession till the disposal of the appeal. However, as regards the order to pay damages, the stay was granted subject to the petitioner depositing a sum of Rs. 5 Crores or furnishing appropriate security for the said amount and the petitioner depositing a sum of Rs. 2 lakhs p.m. from January, 2025 towards the unauthorised occupation of the public premises.

6. Being aggrieved, the petitioner has invoked the writ jurisdiction.

7. Mr. Janak Dwarkadas, learned Senior Advocate for the petitioner, submitted that the perversity in the order passed by the Estate Officer is writ large. The Estate Officer has not at all considered the voluminous material which indicates that the predecessor in title of the petitioner has been in the occupation of the subject premises since 1934 as a tenant. In addition to the documents which were produced during the course of evidence of the petitioner, there are clear and categorical admissions of the witness examined by United India Insurance Co. Ltd. (R2) to the effect that the predecessor in title of the petitioner has been in possession of the subject premises since 1934.

8. Attention of the Court was invited to a communication dated 30th April, 1996 addressed by Union Cooperative Society Limited which came to be merged with respondent No. 1, whereby the request for transfer of the tenancy from the private limited company i.e. Pathological Laboratories Private Limited to the names of Dr. K.T. Gajjar and Dr. Lena J. Gajjar wife of Dr. Jayant K. Gajjar, the predecessor in title of the petitioner, was accepted w.e.f. 3rd May, 1996.

9. The learned Principal Judge despite noting that there were strong circumstances indicating the existence of the tenancy prior to the datum line and the consideration by the Estate Officer was

not adequate, observed that the findings were not totally perverse. Once, there is material to show that the tenancy existed prior the datum line, in view of the judgment of the Supreme Court in the case of **Suhas H. Pophale vs. Oriental Insurance Co. Ltd.& Anr.**¹, the very jurisdiction of the Estate Officer to pass orders under the Public Premises Act becomes unsustainable. In that view of the matter, the learned Principal Judge could not have imposed such onerous condition of deposit of the amount towards damages, urged Mr. Dwarkadas.

10. Mr. Sanglikar, the learned counsel for the respondents, countered the submissions of Mr. Dwarkadas. It was urged that the damages quantified by the Estate Officer are to the tune of Rs. 19.90 Crores. The petitioner is in occupation of commercial premises admeasuring 5700 sq.ft. at a prime place. There is total non-user of the premises. Therefore, having regard to the area and the location of the premises and the damages quantified by the Estate Officer, the learned Principal Judge was justified in directing the deposit of Rs. 5 Crores or furnishing security for the same. Further direction for the payment of Rs. 2 lakhs per month towards unlawful occupation charges also cannot be said to be unreasonable viewed in the context of the area and the location of the premises. A direction for deposit of the amount towards unlawful occupation is a standard

1 2014(4) SCC 657.

norm in staying the execution of a decree for possession.

11. Mr. Sanglikar further submitted that, in any event, the order passed by the learned Principal Judge is an interim and discretionary order. Such order does not warrant interference in exercise of the writ jurisdiction. Attention of the Court was invited to an order passed by the learned single Judge of this Court in **M/s. Balmer Lawrie & Company Ltd. vs. The New India Assurance Co. Ltd. And Anr.** ² wherein this Court had declined to interfere with a direction for payment of 50% of the quantified damages observing that the said direction was neither unreasonable nor perverse.

12. On the merits of the matter, Mr. Sanglikar would urge that though certain documents were produced by the petitioner yet it cannot be said to have been established that the tenancy existed prior to the datum line. The character of the persons who were shown to be in the occupation of the public premises over a period of time has changed from public limited company to private limited company to individual, and the co-relation has not been established. The only document which the petitioner could produce was the rent receipt dated 31st October, 1974, post the datum line 1st January, 1974.

13. I have perused the material on record. Prima facie there is material to show that the predecessors in title of the petitioner have

² W.P. No.332/2016 Dt. 20/01/2016.

been in possession of the subject property since 1934. In fact, in the cross examination, the witness of the respondent No. 1 conceded that the tenancy of Dr. Lena J. Gajjar started from around 1934. When the respondent No. 1 took over the premises, Dr. K.T. Gajjar and Dr. Jayant Gajjar were sitting tenants. In addition, there are documents which prima facie lend support to the claim of the petitioner regarding the tenancy preceding the datum line. The communication dated 30th April, 1996 by the Union Cooperative Building, which merged with respondent No. 1, clearly records that the transfer of the tenancy from a private limited to Dr. K.T. Gajjar, Mrs. Lena Gajjar was approved w.e.f. 3rd May, 1996.

14. I find substance in the submission of Mr. Dwarkadas that, in the face of aforesaid material, the question of jurisdiction to proceed under the Public Premises Act in the light of the judgment in the case of **Suhas Pophale** (supra), arises for consideration.

15. The endeavour of Mr. Sanglikar to urge that since the judgment of **Suhas Pophale** (supra) has been referred to a larger Bench by the Supreme Court in the case of **Life Insurance Corporation of India vs. Vita Private Limited and Anr.**³, the precedential value of the judgment in the case of **Subhas Pophale** (supra) is diluted, does not merit countenance. It is well recognized that the reference of a judgment to a larger Bench does not dilute

3 SLA(C) No.35859/2014 Dt. 17/03/15.

the precedential value of the referred judgment and it continues to be a good law in the interregnum.

16. It is imperative to note that the learned Principal Judge observed that the adequacy and justifiability of the consideration of the material by the Estate Officer was required to be examined. In the impugned order, the learned Principal Judge observed that prima facie strong circumstances were made out in favour of the petitioner and the consideration of the Estate Officer could have been otherwise.

17. The question which thus wrenches to the fore is, whether the learned Principal Judge was justified in directing stay to the monetary part of the order passed by the Estate Officer subject to the condition of making deposit of Rs. 5 Crores and monthly charges of Rs. 2 lakhs for the unlawful occupation. Under the provisions of section 9(3) of the Public Premises Act, the Appellate Authority is empowered to stay the enforcement of the order passed by the trial Court on such conditions as he deems fit. In plain terms, the discretion is vested in the Appellate Authority to impose conditions for the stay of the order passed by the Estate Officer. Those conditions may include an order for deposit of a portion of the damages quantified by the Estate Officer and charges towards unlawful occupation. However, such discretion is required to be

exercised judiciously. Myriad considerations may weigh with the Appellate Authority in imposing conditions: the area and the location of the premises, rent a comparable premises may fetch in the vicinity of the premises, the nature of the claim to possession of the unauthorised occupant and the nature of the case in appeal prima facie made out by the appellant, are few of the factors which predominantly influence the decision.

18. In the case at hand, the most crucial aspect which merited consideration was the prima facie jurisdictional challenge to the authority of the Estate Officer to pass the orders under the Public Premises Act. If the tenancy predates the datum line and the occupant is held to be a deemed tenant under the Maharashtra Rent Control Act, the remedy of respondent No. 1 would lie before another forum and that may oust the jurisdiction of the Estate Officer. As noted above, there is prima facie material in support of such jurisdictional challenge.

19. In this view of the matter, the order of deposit of Rs. 5 Crores and payment of Rs. 2 Lakhs towards the charges for purported unlawful occupation appears to be onerous. In a case where there is no dispute about the application of the provisions of the Public Premises Act and damages have been quantified by the Estate Officer on the basis of objective material, a direction for payment of

a portion of the damages, say even 50%, may not be said to be unreasonable. However, where the jurisdictional fact itself is debatable, an order for deposit of a substantial portion of the damages, may not be sustained. The instant case falls in the latter category.

20. For the foregoing reasons, I am impelled to interfere with the impugned order. Undoubtedly, the public premises is situated in a prime locality. The area is also fairly large. Such premises, in a metropolis like Mumbai, commands premium. Thus, a reasonable amount can be directed to be deposited towards past and future occupation charges. Accordingly, clause (3) of the impugned order deserves to be modified suitably.

21. A direction for deposit of a sum of Rs. 25,00,000/- towards past occupation charges and deposit of a sum of Rs. 50,000/- p.m. towards the occupation charges, from the month of January, 2025 till the disposal of the appeal, as a condition for stay to the execution of the monetary part of the order passed by the Estate Officer seems just and proper. The petition, therefore, deserves to be partly allowed.

Hence, the following order.

ORDER

1 } The petition stands partly allowed.

2} Clause (3) of the impugned order dated 31st January, 2025 stands modified as under.

The monetary part of the order passed by the Estate Officer stands stayed on the condition that the petitioner/ appellant:

(a) deposits a sum of Rs. 25,00,000/- in the City Civil Court, Mumbai or furnishes a bank guarantee in the said sum, within a period of four weeks from today.

(b) deposits a sum of Rs. 50,000/- per month from January, 2025 towards occupation charges from the month of January, 2025 to March, 2025 on or before 15th April, 2025 and continues to deposit the amount towards occupation charges at the said rate on or before 15th day of the succeeding month.

(c) The rest of the conditions in the impugned order remain unaltered.

The petition stands disposed.

(N. J. JAMADAR, J.)