

(2018) 07 BOM CK 0128

In the Bombay High Court

Case No : Writ Petition No. 5051 of 2014

M/s Indian Coffee Workers Cooperative Society Limited

APPELLANT

Vs

Estate Officer, Western Zone, For The Life Insurance
Corporation Of India, Mumbai And Others

RESPONDENT

Date of Decision : 31072018

Acts Referred:

Companies Act, 1956 — Section 617

Public Premises (Eviction of Unauthorized Occupants) Act, 1971 — Section 2(e)

Transfer of Property Act, 1882 — Section 106

Constitution of India, 1950 — Article 136

Citation : (2018) 07 BOM CK 0128

Hon'ble Judges : S. B. Shukre, J

Bench : Single Bench

Advocate : S.N. Bhattad, M.R. Pillai, Smita Deshpande, P.N. Kothari

Final Decision : Dismissed

Judgement

1. Petitioner is a Society registered under the Maharashtra Cooperative Societies Act. It is formed by the coffee workers and it engages itself in the

business of running a coffee house in the city of Nagpur. In order to carry out its business of running a coffee house, it has taken on rent the premises

situated on the ground floor of Indian Mutual Building, Mount Road, Sadar, Nagpur belonging to respondent no. 2. The petitioner was inducted as

tenant in the suit premises with effect from 1st June 1958. It is not in dispute that on that date, respondent no. 2 was a Government company, in which

not less than 51% of the paid-up share capital was belonging to the Central Government, as defined under Section 617 of the Companies Act, 1956,

which definition has also been reflected in Section 2 (e) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short, the

â??Public Premises Actâ??).

2. It is contended by the petitioner that in order to harass it, initially, respondent no. 2 demanded manifold increase in the rent and when the petitioner

expressed its inability to fulfill the demand, respondent no. 2 issued a notice under the provisions of the Public Premises Act, thereby terminating

tenancy of the petitioner. By the notice of termination, possession of the suit premises was also demanded. As the petitioner did not respond positively

to the notice, respondent no. 2 initiated proceedings for eviction of the petitioner from the suit premises under the provisions of the Public Premises

Act. The proceedings were initiated as Cases No. 314/2010 and 314A/2010. The proceedings culminated into an order of eviction of the petitioner

from the suit premises. An appeal was preferred by the petitioner challenging the order of respondent no. 1 before the District Judge, Nagpur, which

was dismissed by the District Judge. A writ petition was preferred against the order of dismissal of the appeal by the District judge before this Court.

This Court allowed the writ petition, set aside the orders of the authorities below on the ground that adequate opportunity of hearing was not granted to

the petitioner and remanded the matter back to respondent no. 1 for deciding it afresh on merits.

3. After remand, as the fresh hearing began, the petitioner moved an application before respondent no. 1 for dismissal of the proceedings on the

ground that the suit premises were excluded from the applicability of the Public Premises Act in view of the law laid down by the Hon'ble Apex Court

in the case of Dr Suhas H. Pophale v. Oriental Insurance Co. Ltd. & its Estate Officer reported in AIR 2014 SC 1509.

According to the petitioner, the tenancy was created with effect from 1st June 1958 while the Public Premises Act came into being with effect from

16.9.1958 and such being the position, the suit premises fell in one out of two categories of the premises contemplated by the Hon'ble Apex Court in

Dr Suhas H. Pophale (supra) while considering applicability of the Public Premises Act and this category of the premises was excluded from its

applicability.

4. The application was opposed by respondent no. 2 contending that the Public Premises Act became applicable to the suit premises the day on which

the premises became public premises in terms of Section 2 (e) of the Act and

this event took place on the date on which the Public Premises Act came into force and that day was of 16.9.1958. It was also submitted that the provisions of the Public Premises Act had overriding effect on any State Rent Law and, therefore, there was no way that the proceedings for termination of the tenancy and eviction from the tenanted premises could have been initiated under the State Rent Law before the forum provided under that law.

5. After considering the rival submissions, respondent no. 1 by the order passed on 28th July 2014, dismissed the application holding that the provisions of the Public Premises Act were applicable to the instant case and the proceedings initiated thereunder for eviction of the unauthorized tenant were maintainable. It is this order which is under challenge in the present writ petition before this Court.

6. I have heard Shri S. N. Bhattad, learned counsel for the petitioner and Shri P. N. Kothari, learned counsel for respondent no. 2. Respondent no. 1 is a formal party. I have gone through the facts of the case, as borne out from the paper book, and also the impugned order.

7. The only question that arises in this petition is:

Whether the Public Premises Act is applicable to the suit premises ?

The answer to the question can be ascertained from the law laid down by the Hon'ble Apex Court in its leading cases. There are only three leading cases which succinctly clarify the position and provide the answer that we are looking for.

8. Learned counsel for the petitioner has placed heavy reliance upon the case of Dr Suhas (supra) and M/s Band Box Private Limited v. Estate

Officer, Punjab and Sind Bank & anr reported in AIR 2014 SC 1602 while submitting that this case falls in one of the two categories of cases

mentioned therein and therefore, is out of the purview of the Public Premises Act. He also places his reliance upon Ashoka Marketing Limited & anr

v. Punjab National Bank & ors reported in (1990) 4 SCC 406, which case, according to learned counsel for the petitioner, has been considered and

further explained in Dr Suhas (supra). On the other hand, Shri Kothari has placed his reliance mainly upon Ashoka Marketing and submits that the law

laid down in Dr Suhas has to be understood in the light of what has been held by the Hon'ble Supreme Court in the case of Ashoka Marketing. He

also referred to the judgment delivered in the case of Rani Sevakram v. The Oriental Insurance Co. Ltd. by the learned single Judge of this Court in

WP No. 2442 of 1994 on 28th February 2017 along with other connected matters explaining the core principle of Ashoka Marketing which has been

reiterated in Dr Suhas's case (supra).

9. First, it would be appropriate to consider some relevant facts about which there is no dispute. The petitioner was inducted as tenant in the suit

premises on 1st June 1958. On that date, respondent no. 2, which is landlord of the suit premises, having been already nationalized in the year 1956,

was a Government Company and it continues to be so till date. On 1.6.1958, the suit premises were not public premises, although respondent no. 2

was a Government Company, its majority paid-up share capital being held by the Central Government in terms of Section 617 of the Companies Act.

The reason for the suit premises being not Public Premises was that the Public Premises Act was not in existence on 1.6.1958. After a few months

later, the Public Premises Act came into force and its date of commencement was 16.9.1958. On and from this date of 16.9.1958, the suit premises

became public premises as defined under Section 2 (e) of the Public Premises Act. In the light of these undisputed facts that now we have to consider

the question of applicability of the Public Premises Act to the suit premises and maintainability of the proceedings initiated for eviction of the petitioner

under the provisions of this Act.

10. In Ashoka Marketing (supra), a case decided by constitution bench of the Hon'ble Supreme Court, the questions involved were –

(i) which of the two special legislations, the Rent Control Act and the Public Premises Act, will prevail over which of the Statutes ?, and

(ii) whether the Public Premises Act would have final say over the matters relating to unauthorized occupation of the buildings and premises belonging

to the Central Government, State Government or the Government Companies etc ?

The questions were answered by holding that the Public Premises Act would have overriding effect over the Rent Control Act and it would have the

final say by excluding the applicability of the Rent Control Act to the buildings belonging to the Government, Government Companies, Corporations

and autonomous bodies in the same manner as the property belonging to the

Government. The relevant observations of the Hon'ble Supreme Court appearing in paragraph 64 read thus :

¶64. It would thus appear that, while the Rent Control Act is intended to deal with the general relationship of landlords and tenants in respect of premises other than government premises, the Public Premises Act is intended to deal with speedy recovery of possession of premises of public nature, i.e. property belonging to the Central Government, or companies in which the Central Government has substantial interest or corporations owned or controlled by the Central Government and certain corporations, institutions, autonomous bodies and local authorities. The effect of giving overriding effect to the provisions of the Public Premises Act over the Rent Control Act, would be that buildings belonging to companies, corporations and autonomous bodies referred to in Section 2 (e) of the Public Premises Act would be excluded from the ambit of the Rent Control Act in the same manner as properties belonging to the Central Government. The reason underlying the exclusion of property belonging to the Government from the ambit of the Rent Control Act, is that the Government while dealing with the citizens in respect of property belonging to it would not act for its own purpose as a private landlord but would act in public interest. What can be said with regard to government in relation to property belonging to it can also be said with regard to companies, corporations and other statutory bodies mentioned in Section 2(e) of the Public Premises Act. In our opinion, therefore, keeping in view the object and purpose underlying both the enactments viz. the Rent Control Act and the Public Premises Act, the provisions of the Public Premises Act have to be construed as overriding the provisions contained in the Rent Control Act.

11. An argument was made before the Hon'ble Apex Court in Ashoka Marketing that there was no conflict between the provisions of the Rent Control Act and the Public Premises Act and that both these provisions could be given effect to without the one overriding the other, meaning thereby that permission to evict the tenant or order of eviction of the tenant would have to be obtained from the forum under the Rent Control Act first and then the proceeding would have to be initiated for actual eviction under the provisions of the Public Premises Act. The argument was rejected by the Hon'ble Apex Court reasoning that its acceptance would amount to conferring

dual benefit or protection to the persons in occupation of the public premises, which would be like, there would be a proceeding under the Rent Control Act before the Rent Controller to begin with and it would be followed by appeal before the Rent Control Tribunal and revision before the High Court later and after culmination of all these proceedings, there would be another proceeding under the Public Premises Act before the Estate Officer and the Appellate Authority. The Hon'ble Apex Court held that this would only defeat the intention of the Parliament in providing speedy recovery of the possession of premises of public nature. For these reasons the Hon'ble Apex Court rejected the argument that the Public Premises Act cannot be applied to the premises which fall under the ambit of Rent Control Act and laid down in no uncertain terms that a person in unauthorised occupation of public premises as referred to in Section 2 (e) of the Public Premises Act would not be entitled to any protection of Rent Control Act. The relevant observations of the Apex Court appearing in paragraph 70 are reproduced thus :

“For the reasons aforesaid, we are unable to accept the contention of the learned counsel for the petitioners that the provisions contained in the Public Premises Act cannot be applied to the premises which fall within the ambit of the Rent Control Act. In our opinion, the provisions of the Public Premises Act, to the extent they cover premises falling within the ambit of the Rent Control Act, override the provisions of the Rent Control Act and a person in unauthorized occupation of public premises under Section 2 (e) of the Act cannot invoke the protection of the Rent Control Act.”

12. These observations would enable us to find out the ratio decidendi of Ashoka Marketing. It is the principle of law which points out that the moment the suit premises become public premises, they go out of the ambit of the Rent Control Act and get under the cover of the Public Premises Act and, therefore, from that date onwards, the person in occupation of the public premises, whose occupation has been rendered unauthorized by virtue of expiry of the authority to continue to occupy or by determination or termination of the authority to occupy would be answerable only under the provisions of the Public Premises Act and cannot invoke the protection of the Rent Control Act. The reason is, as can be seen from the observations reproduced earlier, that the suit premises by virtue of they being or becoming

public premises get excluded from the ambit of the Rent Control Act and included within the scope of the Public Premises Act.

13. Now, let us consider the case of Dr. Suhas decided by a 2 Judge Bench of Hon'ble Supreme Court. Upon a careful consideration of the judgment

as a whole, which has been clarified by another 2 Judge Bench of Hon'ble Apex Court in M/s Band Box (supra), it is seen, the same principle of law

as in the case of Ashok Marketing has been reiterated, though in its application to the facts of the case, a different result appears to be produced. But,

the fact remains that the underlying principle is same. The observations appearing in paragraphs 40 and 48 of the judgment in Dr Suhas are relevant in this regard and they read as under:

“40. In the context of the present controversy, we must refer to one more aspect. As we have noted earlier in paragraph 63 of Ashoka Marketing

(AIR 1991 SC 855), the Constitution Bench has referred to the objects and reasons behind the Public Premises Act wherein it is stated that it has

become impossible for the Government to take expeditious action even in “flagrant cases of unauthorised occupation” of public premises. The

Court has thereafter observed in that very paragraph that the Public Premises Act is enacted to deal with mischief of “rampant unauthorised

occupation” of public premises.”

“48. As far as the eviction of unauthorised occupants from public premises is concerned, undoubtedly it is covered under the Public Premises Act,

but it is so covered from 16.9.1958, or from the later date when the concerned premises become public premises by virtue of the concerned premises

vesting into a Government company or a Corporation like LIC or the Nationalised Banks or the General Insurance Companies like the respondent

no.1. Thus there are two categories of occupants of these public Corporations who get excluded from the coverage of the Act itself. Firstly, those

who are in occupation since prior to 16.9.1958, i.e. prior to the Act becoming applicable, are clearly outside the coverage of the Act. Secondly, those

who come in occupation, thereafter, but prior to the date of the concerned premises belonging to a Government Corporation or a Company, and are

covered under a protective provision of the State Rent Act, like the appellant herein, also get excluded. Until such date, the Bombay Rent Act and its

successor Maharashtra Rent Control Act will continue to govern the relationship

between the occupants of such premises on the one hand, and such Government Companies and Corporations on the other. Hence, with respect to such occupants it will not be open to such Companies or Corporations to issue notices, and to proceed against such occupants under the Public Premises Act, and such proceedings will be void and illegal. Similarly, it will be open for such occupants of these premises to seek declaration of their status, and other rights such as transmission of the tenancy to the legal heirs etc. under the Bombay Rent Act or its successor Maharashtra Rent Control Act, and also to seek protective reliefs in the nature of injunctions against unjustified actions or orders of eviction if so passed, by approaching the forum provided under the State Act which alone will have the jurisdiction to entertain such proceedingsâ??.

14. In M/s Band Box, it has been clarified by the Hon'ble Apex Court that the view that the Bombay Rent Act would not prevail qua the repugnancy between it and the Public Premises has not been contradicted in Dr Suhas, rather, Dr Suhas relies on the judgment of Ashoka Marketing laying down the law that the Public Premises Act as well as the Rent Control Act are referable to entries in concurrent fields and they operate in their own fields.

This has been so held in paragraph 10 of the judgment, the relevant portion of which is reproduced as under :

â??As seen from paragraph 40, quoted above, the judgment clearly says that the Bombay Rent Act would not prevail qua the repugnancy between it and the Public Premises Act. That aspect has not been contradicted in Dr Suhas H. Pophale's case (2014 AIR SCW 1171) (supra). It also relies upon the judgment in Ashoka Marketing Limited (supra) which says that the Public Premises Act as well as the State Rent Control Laws are both referable to entries in concurrent list and they operate in their own field. It is only in the area of its own that the State Rent Control Act applies and in its own time frame.

The judgment in Dr Suhas Pophale's case accepts that the Public Premises Act will prevail over the Bombay Rent Act to the extent of repugnancy i.e. for eviction of unauthorised tenants and for collection of arrear of rent, but, not prior to 16.9.1958 when the Public Premises Act became applicable....â??

15. At this juncture, it would be useful for us to take note of some relevant facts

of the case of Ashoka Marketing decided as a group matter. Apart from one writ petition, there were two appeals the facts of which have significance for this case. In these two appeals, the tenants were inducted with effect from 1.7.1958 and the landlord was a private entity, Punjab National Bank Limited. Its undertaking was transferred and stood vested in Punjab National Bank, a body corporate, later on as a result of enactment of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

With this development, the private entity became a body corporate and so the tenanted premises became public premises as contemplated under Section 2 (e) of the Public Premises Act. In other words, the tenancy was created prior to the date on which the tenanted premises became the public premises under Section 2 (e) of the Public Premises Act. Thereafter, the Bank by notices dated May 18, 1971 issued under Section 106 of the Transfer of Property Act, terminated the tenancies of both the appellants with effect from November 30, 1971. The Bank, then initiated proceedings against both the tenants under the Rent Control Act. In these proceedings an objection was raised by both the appellants that in view of the provisions of the Public Premises Act those proceedings were not maintainable. During pendency of the proceedings under the Rent Control Act, proceedings were filed under the provisions of the Public Premises Act and while those proceedings were pending, the Rent Controller dismissed the proceedings pending before him. In the appeals before the Supreme Court, the appellants/tenants took a plea that they were entitled to protection under the Rent Control Act on the ground that the proceedings for eviction under the Public Premises Act were not maintainable and the proceedings could only be taken under the Rent Control Act. Hon'ble Supreme Court, in this background of facts, held on merits that the tenanted premises having become public premises as contemplated under the Public Premises Act, were out of the ambit of the Rent Control Act, and were governed only by the provisions of the Public Premises Act. In finding so, it disapproved of the conduct of the appellants/tenants but dismissed the appeals on the merits.

The relevant observations of Hon'ble Apex Court, appearing in para 72 are reproduced thus :

“Having got the proceedings under the Rent Control Act dismissed the appellants are now raising the plea that the proceedings under the Public

Premises Act are not maintainable and that the only remedy available is under the Rent Control Act. This conduct of the appellants would have

disentitled them from invoking the jurisdiction of this Court under Article 136 of the Constitution. Since we are of the view that the appellants cannot

succeed on the merits, we do not propose to dismiss the appeals on this preliminary ground.â??

16. The observations of the Hon'ble Supreme Court in *Dr. Suhas Pophale*, which are highlighted in Italics, when considered together with the

observations in *M/s Band Box (supra)* that Dr Suhah's case relies upon *Ashoka Marketing's* case and does not contradict the view taken therein, and

also the ratio of *Ashoka Marketing* as noted earlier, should sufficiently guide us to the conclusion that Dr. Suhas Pophale also lays down the same

ratio as *Ashoka Marketing* that as far as the eviction of unauthorised occupants from Public Premises is concerned, undoubtedly it is covered under

the Public Premises Act, but it is so covered from 16.9.1958 or from later date when the concerned premises become public premises and till that time

such premises would be continued to be governed by the provisions of the Rent Control Act. This principle of law was applied to facts peculiar to the

case of Dr. Suhas and it appears to have produced a different result in the nature of creation of two categories of cases to which the Public Premises

Act was held to be not applicable. But, the facts of this case showing that the respondent No.2 was already a government company, unlike in Dr

Suhas, when the tenancy was created, would make it as not falling in any of those two categories. This is also the view taken by the learned single

Judge of this Court in *Rani Sevakram (supra)*.

17. Learned counsel for the petitioner has also relied upon *Dr Priti Bhatt v. Central Bank of India* reported in 2017 (6) Mh. L. J. 330 in which the

Division Bench of this Court has held that as the petitioner's father was original tenant in the suit premises from the year 1950, the proceedings under

the Public Premises Act against the tenant were not competent. In my respectful submission, the view so taken being based upon the facts peculiar to

that case, would have no application to the present case, for the reason that at the time when the petitioner was inducted in the premises as tenant in

the present case, the respondent No.2 was already a Government Company as defined under Section 617 of the Companies Act, 1956 and, therefore,

the premises belonged to the Government Company which was not the case in Dr Preeti wherein the tenanted premises were purchased by a body corporate like the Central Bank of India subsequently in the year 1972.

18. In view of the discussion made thus far, I find that the suit premises are covered by the provisions of the Public Premises Act and so, it cannot be

said that the proceedings initiated for eviction of the premises occupied by the petitioner after determination of the authority to occupy them under the

provisions of the Public Premises Act before respondent no. 1 are not maintainable. I am of the view that they are maintainable and as such

respondent no. 1 has committed no illegality in rejecting the application filed by the petitioner for dismissal of the proceedings.

There is no merit in the petition.

19. Writ Petition is dismissed. Rule is discharged. No costs.

At this juncture, learned counsel for the petitioner prays for continuation of the earlier order of granting interim relief for a period of eight weeks.

Learned counsel for respondent no. 2 submits that the earlier Estate Officer has retired and new Officer has taken over very recently and, therefore,

in any case, hearing is not going to be commenced at least for eight weeks hereafter.

Considering the fact that the interim relief was in operation, the same can be continued for a further period of four weeks in order to enable the

petitioner to challenge this judgment before the Hon'ble Apex Court. Accordingly, the interim relief granted on 13th April 2018 to the effect that no

final order shall be passed by the Estate Officer is continued for a period of four weeks more.