

(1996) 06 KAR CK 0048

In the Karnataka High Court

Case No : Miscellaneous Second Appeal No. 42 of 1995 connected with
Miscellaneous Second Appeal Nos. 93 and 96 of 1995

The Headquarters Assistant, the Deputy Commissioner's
Office, Mysore and Others

APPELLANT

Vs

The Vendi Chand Hasthimal and Company, Mysore and
Others

RESPONDENT

Date of Decision : 06-06-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 — Section
2(E)

Citation : (1997) 5 KarLJ 493

Hon'ble Judges : Harinath Tilhari, J

Judgement

1. These three defendants appeals arise out of common judgment and order of remand dated 28-2-1994 delivered by the II Additional Civil Judge, Mysore in Regular Appeal Nos. 234 to 236 of 1993 filed by Sri B. Shama Rao, H. Ganeshmal, M/s. Abdul Kareem Abubekar Sait M and Company and Sri Vendi Chand Hasthimal and Company, respectively challenging the common judgment and order dated 1-10-1993 passed by the 1st Principal Munsiff, Mysore in Original Suit Nos. 2094, 2098 and 2102 of 1990 by the aforesaid three plaintiffs who were appellants before the first Appellate Court, whereby the Trial Court i.e. the learned Munsiff has dismissed the plaintiffs suit on the ground that in view of the applicability of Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974, the suit was not maintainable according to the learned Trial Court. The lower Appellate Court upset the finding by setting aside the judgment of the Trial Court, restored the suits and remanded the three suits to the Trial Court to readmit the suits to their original numbers and to try them afresh after framing the additional issues as regards the declaratory relief sought in the suit.

2. The facts of the case in brief are that the plaintiffs-respondents filed those suits alleging and claiming themselves to be the tenants in occupation of the

respective premises in question. The plaintiffs claim in the suit that though the premises in question belong to the Government and those premises were let out by the Executive Engineer of the P.W.D. Department under an agreement. The plaintiffs-opposite parties case has been that the plaintiffs tenancy has not been terminated and they have continued as tenants under Section 116 of the Transfer of Property Act. According to plaintiffs though the premises may be the public premises but as they are not in unauthorised occupation of the premises in question forming part of the public premises, Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 was not applicable to the plaintiffs-respondents and as the plaintiffs were not the unauthorised occupants, so the opposite parties to be restrained from proceeding against the plaintiffs under Section 4. In the plaint it has been mentioned that the opposite parties had issued a notice to the plaintiffs on 14-8-1980 informing the plaintiffs that the plaintiffs-opposite parties were the unauthorised occupants of the respective premises and they were called upon to show-cause on or before 25-8-1980 i.e. the dates mentioned in the notice to the defendant 1 as to why action be not taken against the plaintiffs-respondents under the provisions of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act. The plaintiffs further alleged that they filed the reply to the show-cause notice informing the Authorities that the plaintiffs have not been in unauthorised occupation of the premises in their possession. The plaintiffs further alleged that plaintiffs had appeared before the defendants office to verify if any order has been passed, but they were not given any information as regards passing or non-passing of the eviction order against the plaintiffs. That the plaintiffs were not informed that if any order of eviction or otherwise was passed against the plaintiffs-respondents. The plaintiffs-opposite parties apprehend that the opposite parties may evict or turn out the plaintiffs from the premises and as the Act is not applicable, the action of opposite parties is unauthorised, so prayed that degree for injunction be granted against the defendants restraining them from taking any action or initiating any action or continuing any action against the plaintiffs under the said Act i.e. the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974. The plaintiffs further claimed declaratory degree that Act is not applicable to the plaintiffs.

3. In the suit written statement was filed by the defendants-appellants taking various pleas, including the plea to the effect that the Civil Court had no jurisdiction to entertain the suit and that plaintiffs had no locus standi to file the suit. The defendants took the plea that the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act was applicable. The defendants also stated in the written statement that final orders for eviction have already been passed against the plaintiffs. On the basis of the pleas taken by the parties issues were framed by the Trial Court. The learned Munsiff framed the following issues: "(1) Whether the plaintiffs proves that the provisions of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 is not applicable to him?

(2) Whether the plaintiff proves that the defendants illegally threatened to

initiate the action under the provisions of the said Act?

(3) Whether the plaintiff proves that he is entitled to permanent injunction sought?

(4) Whether the defendants prove that the suit is not maintainable as no notice under Section 80, Civil Procedure Code, has been issued?

(5) Whether the defendants prove that the suit is bad for non-joinder of necessary parties?

(6) Whether the defendants prove that the Court fee paid is not proper and sufficient?

(7) What decree or order?"

4. The Trial Court decided Issue No. 1 in all the suits as a preliminary issue and held that the Act of 1974 was applicable and as such in view of Sections 11 and 16 of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, Civil Court jurisdiction is barred in respect of matters of eviction proceedings against a person who is in unauthorised occupation of public premises and so suit under Section 9 was not maintainable. On appeal being filed, the learned Civil Judge entered into the merits of the case and observed as under:

"However, even then, when the position of the appellants is that of a tenant holding over, the tenancy is required to be determined in accordance with law and that unless and until it is so terminated, can it be inferred that the occupation of the respective premises by the appellants is unauthorised? Certainly not".

In the circumstances, the learned Civil Judge further observed:

"I am of the considered opinion that the occupation of the respective premises by the appellants herein does not come within the ambit of Section 2(g) of the Karnataka Public Premises (Eviction of Unauthorised Occupation) Act, 1974". and has held that on the date of the suit, the occupation of the plaintiffs who were appellants before the first Appellate Court are now respondent, before this Court had been authorised one. He further opined that the question of eviction under the Act of 1974 could arise only when the occupation becomes unauthorised and as such he held that the Act was not applicable to the case of the plaintiffs, until their tenancy was determined according to law. He further opined that the learned Munsiff ought to have considered the question of the actual position and status of the plaintiffs on the date of the suit in respect of the premises in question though those premises are public premises and the provisions of the said Act, according to the Civil Judge was applicable to those premises. He further observed that in order to initiate an action for eviction what is necessary is that the occupation of the person concerned should be unauthorised, then the question of eviction of the persons such as the plaintiffs who were appellants before the learned Civil Judge did not arise. According to the learned Civil Judge,

the learned Munsiff missed that point i.e., the question of unauthorised occupation of the premises. Feeling aggrieved from the judgment and order of remand passed by the Appellate Court, the defendants in all those suits filed in the first appeal from order which is popularly described here as miscellaneous second appeal under Order 43, Rule 1(u) of the Civil Procedure Code.

5. I have heard the learned Government Pleader, Sri R.K. Hatti, and the learned Counsel for the respondents, Sri S.N. Bhat.

6. Before proceeding further, I may mention that as the three appeals raise common questions of law and the points decided by the common judgment by the Court. Court in the three suits as well as in the three first appeals, here also these three appeals i.e. Miscellaneous Second Appeal Nos. 42, 93 and 96 of 1995 are being decided by common judgment making Miscellaneous Second Appeal No. 42 of 1995 as the leading case.

7. On behalf of the appellants, Sri R.K. Hatti, learned Government Pleader contended that the order of remand passed by the learned lower Appellate Court suffers from illegality and is based on completely mistaken and erroneous approach to the case. The learned Counsel for the appellant, Sri R.K. Hatti, submitted that within the scope of Issue No. 1 what had to be decided is the question of maintainability of the suit in the context of applicability and non-applicability of the Act. Sri R.K. Hatti, submitted if the Act applied to the public premises then the provisions of the Act had to be applied. He further submitted that in view of the provisions of Sections 11, 16 and 17 of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974, the present suit filed by the plaintiff-respondent was not maintainable. Sri R.K. Hatti, urged that there is no dispute between the parties that the premises in question in occupation of the respective plaintiffs is the public premises or part of the public premises. Sri R.K. Hatti, further submitted that when the premises were public premises, Act was applicable. The question of applicability of the Act is distinct from the question of proceedings under particular section being taken and eviction order being passed under the particular section i.e. Section 4 or 5 of the Act. Sri R.K. Hatti, further urged that no action in Civil Court either in the form of civil suit or in the form of a prosecution or otherwise is maintainable against the parties including Competent Authority even challenging those orders of the authorities, in view of the provisions of Section 17 of the Act. The plaintiff's case is that the Act did not apply because he was not an unauthorised occupant. Sri R.K. Hatti, submitted that for eviction of a person who is in unauthorised occupation of the public premises, really the Act provides the only remedy. He submitted, sine quo non for application of the Act is that the premises is a public premise. The authorities had been conferred power to determine the question whether the occupation of a public premises is in the authorised occupation or unauthorised occupation and if the person is or continues in authorised occupation of the public premises it cannot pass any order of eviction, but under the provisions of Section 4, if the Competent Authority is satisfied after consideration of the

material and after hearing the opposite party - the occupant, that these occupation is unauthorised occupation, then it can pass the order of eviction under and in accordance with that Act. He submitted that Section 16 bars the Civil Courts jurisdiction in these matters. Neither the State can take action in respect of unauthorised occupants of public premises except in accordance with the provisions of the Act nor can any person file a suit challenging the action of the authority, if that action has been taken in pursuance of and in accordance with the provision of the Act. He submitted that the question unauthorised occupation is not relevant and material with reference to the question of applicability of the Act. The question of applicability of the Act so far is concerned, the learned Government Pleader urged that the material provision is Section 1 of the Act. The question of authorised and unauthorised occupation is only relevant when proceedings are commenced and final orders are to be passed under Sections 4 and 5, but that is not relevant to the question of applicability of the Act.

8. The learned Counsel for the plaintiffs-respondents contended that the plaintiffs-respondents were not in unauthorised occupation of the premises. He submitted that the premises may be the public premises but the plaintiffs-respondents occupation was neither illegal nor unauthorised one within the meaning of Section 2(g) of the Act, and so the Act did not apply and therefore plaintiffs had been entitled to file the suit for injunction against the opposite parties and Section 16 did not debar the plaintiffs. Act did not debar the jurisdiction of the Court to entertain the suit and the learned lower Appellate Court has rightly held that as each of the plaintiffs was tenant by holding over and he was in the authorised occupation, so the Act did not apply. He further submitted that as per this order of remand, the matter has to be tried further by the Court below as to whether plaintiff is entitled to injunction or not. He submitted that the order of remand as such cannot be said to be illegal or to be suffering from any error of law. He submitted that he has also claimed declaratory decree that Act is not applicable and that he is entitled to claim. No other contention has been raised on behalf of either of the parties.

9. I have applied my mind to the contentions made by the learned Counsels for the parties. I have also seen and perused the copy of the plaint which has been produced before me. The Trial Court framed the first issue as under:

(i) Whether the plaintiff proves that provision of Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 is not applicable?

It would have been better if it would have added to this issue - "If Act is applicable, its effect on the suit?" The learned Counsel for the parties pointed and submitted that if the Act is applicable to the case in hand then the suit would not have been maintainable, but, if Act is not applicable then plaintiff is entitled to proceed with the case and plaintiff's suit is maintainable.

9-A. The question of application of the Act has to be considered in the light of the

provisions of the Act. It will be profitable on my part to make reference to certain provisions of the Act.

10. The preamble of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974 reads as under:

"An Act to provide for the eviction of unauthorised occupants from public premises and for certain incidental matters".

Section 1 of the Act reads as under:

"1. Short title, extent and commencement.-(1) This Act may be called "Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974.

(2) It extends to the whole of the State of Karnataka.

(3) It shall be deemed to have come into force on the 18th January, 1962, except Sections 12 and 19 which shall come into force at once".

11. A perusal of Section 1 of the Act indicates that the Act has been enacted to make provisions for eviction of unauthorised occupants from public premises. In other words, this Act has been enacted with reference to public premises and the object of the Act is to make provisions for eviction of unauthorised occupants from such premises. Under Section 3, the State Government has been conferred power to appoint Competent Officers for the purposes of the Act and to define the local limits within which or the categories of public premises in respect of which the Competent Officers are to exercise the power conferred on and to perform the duties imposed under the Act. A reading of Sections 1 and 3 along with the preamble of the Act, reveals that the scope of applicability of the Act is with reference to the public premises within the State of Karnataka and the State Government has been conferred power to define also the categories of those public premises. It does not apply to the private premises. It will apply to the public premises as defined by Section 2(e) of the Act. Section 2(e) reads as under:

"Public premises" means any premises belong to or allotted to State Government or taken on lease or requisitioned by or on behalf of the State Government and includes any premises belonging or taken on behalf of,-

(i) a Local Authority;

(ii) any Company as defined in Section 3 of the Companies Act, 1956 (Central Act 1 of 1956) in which not less than fifty one per cent of the paid up share capital is held by the State Government;

(iii) any Corporation (not being a company defined in Section 3 of the Companies Act, 1956 established by or under (a Central Act) or a State Act and owned or controlled by the State Government; and (iv) a muzrai institution or religious or charitable institution under the management of the State Government;

(v) a Wakf under the management of the Karnataka State Board of Wakfs;

(vi) the State Government and the Government of Andhra Pradesh jointly, and under the management or administrative control of the Tungabhadra Board constituted by the Government of India under sub-section (4) of Section 66 of the Andhra State Act, 1953 (Central Act 3 of 1953).

Thus this Section 2(e) defines public premises.

12. A reading of Section 3 indicates that Competent Authorities can exercise powers in respect of public premises and the Act is to apply with reference to public premises as mentioned above. Sections 4 and 5 of the Act deal with the process and procedure in the matter of proceedings for eviction of unauthorised occupants. Section 4 provides that if the Competent Officer is of the opinion that any person are in unauthorised occupation of any public premises and that they should be evicted, then the Competent Officer shall issue in the manner provided in the Act, a notice in writing calling upon such person or such persons which in its opinion is in unauthorised occupation to show-cause why order of eviction should not be made against him. The contents of the notice and how notice shall be given and served has been clearly specified under sub-sections (2), (3) and (4) of Section 4. Sub-section (3) provides the mode of service of the notice. Sub-section (4) of Section 4 of the Act provides for alternative mode of service of notice also.

13. Section 5 of the Act, provides that the Competent Officer shall after considering the cause shown by the person concerned in pursuance of notice and any evidence produced in support of the same and after giving the person concerned an opportunity of being heard, if the Competent Authority is satisfied that the public premises are in unauthorised occupation then on a date to be fixed for the purpose, the Competent Officer may make an order of eviction and in the order of eviction reasons shall be recorded and direction shall be given to the person concerned that the premises shall be vacated by such unauthorised occupants, and it provides that the copy of the order is as well to be affixed on the outer door or some other conspicuous part of the public premises.

14. Section 10 of the Act provides for appeal from the order passed by the Competent Officer under Section 5 or 7 of the Act and it provides that the appeal shall lie to the District Judge, subject to the provisions of limitation of 30 days as mentioned in sub-section (2).

15. Section 11 of the Act give the finality to the orders. It reads as under:

"Finality of orders.-Save as otherwise expressly provided in this Act, every order made by a Competent Officer or Appellate Officer under this Act shall be final and shall not be called in question in any original suit, application or execution proceedings and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act".

16. Sections 16 and 17 of the Act may also be referred herewith:

"16. Bar of jurisdiction.-No Court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of rent payable under sub-section (1) of Section 7 or the damages payable under sub-section (2) of that section or the costs awarded to State Government or the Local Authority or the Corporate Authority under sub-section (5) of Section 10 or any portion of such rent damages or costs.

17. Protection of action taken in good faith.-No suit, prosecution or other legal proceeding shall lie against the State Government or the Corporate Authority or the Appellate Officer or the Competent Officer in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder".

17. A reading of these provisions firstly reveals that the Act applies to the entire State of Karnataka over and in respect of public premises with reference to the matter of eviction of unauthorised occupants. It provides the procedure, how the proceedings should be taken for eviction of unauthorised occupants from public premises and which authorities will be competent to hear and decide the matter and take action. As mentioned earlier, a reading of Sections 3, 4 and 5 firstly reveals that the Competent Authorities appointed under Section 3 of the Act have specifically been empowered to take action in respect of matters for eviction of unauthorised occupants from public premises. The Act applies to public premises exclusively. So far the question of taking proceedings for eviction is concerned under this Act, the proceedings can be taken against unauthorised occupants. Under general principles of law ordinarily there is no question of proceeding for eviction being taken against persons in valid occupation under the authority of law or under certain authority. Till a person's occupation of a premises is under certain valid authority or right or valid deed or grant, etc., no question of eviction may arise until his authority to occupy the premises is taken away in accordance with law. Where the authority to occupy is taken away and the authority to occupy ceases, then that person's occupation may be said to be unauthorised one, unless it is otherwise protected by some provisions of law. So, in the nut-shell, action for eviction of unauthorised occupants so far as the public properties i.e., premises are concerned is covered by this Act. Therefore, in order to initiate an action for eviction of an unauthorised occupant, under Karnataka Act, 1974, it has to be shown and in case of dispute, it is to be established, that the premises in question is a public premises, then it will be covered by the Act. Then the Competent Authority may initiate proceeding against a person who, in his opinion, is or continues to be in unauthorised occupation thereof. Section 4 indicates how the proceedings will be initiated. The use of expression that if the Competent Officer is of opinion that any person is in unauthorised occupation and that he should be evicted, then the Competent Authority may initiate proceedings under and in accordance with Section 4 of the Act reveals that with reference to the public property, the Competent Authority should first form a prima facie tentative opinion with respect to two things that the public premises

is in unauthorised occupation of some one and that the said unauthorised occupant should be evicted. There is a distinction between the expression, "of opinion", or "is of opinion" and the use of expression "is satisfied" used in Section 5(1) of the Act. Opinion here indicates that tentative opinion may not be final opinion with respect to the two things i.e. the unauthorised occupation of the public premises by some one and that the said unauthorised occupants should be evicted. After forming of tentative opinion as to these two things, the authorities have to issue the notice as per the requirements of sub-section (1) and sub-section (2) of the Act and provide the person concerned an opportunity to show-cause why action for eviction should not be taken. It may be that authority or officer may be wrong in so opining. That the person might be an authorised occupant, then the tentative opinion might be wrong and that will not affect the jurisdiction of the officer of authority if he has formed the opinions right or wrong to issue notice to show-cause. It means that if the authority opines that a person is in unauthorised occupation, it can issue the notice. Then the person concerned has to show that he is in the authorised occupation by producing relevant material evidence. Then the Competent Authority has been required to decide that question and he has to satisfy himself after hearing the party concerned if and whether the person concerned in that case i.e. the person in occupation is unauthorised occupant. After looking to the evidence of both the sides and hearing the parties and applying its mind to the requirements of Sections 4 and 5, the authority is finally satisfied and holds that the person concerned is in unauthorised occupation, then he may order eviction of such unauthorised occupant. This indicates that "satisfied" means satisfied after considering the material. Thus there are two stages, one of forming the prima facie opinion that one is unauthorised occupation of public premises at the stage of i.e. before issuance of notices under Section 4 and the second stage is of being satisfied on consideration of material and evidence if one is an unauthorised occupant of the public premises. These two sections shows that the contention made by the learned Counsel for the respondent that for application of the Act, the person should be proved to be in unauthorised occupation is mistaken because if condition is for application of the Act then until Act applies, the authorities could not proceed and even could not issue notices under Section 4 of the Act. So, for application of the Act to the case what is material to be looked into, whether the premises is a public premises or not. Thereafter, if the premises is a public premises, in respect of eviction of unauthorised occupant this specific procedure that has been provided under the Act has to be followed by the authorities. Section 16 of the Act really provides that the State shall have no other remedy such as filing of suit for eviction of an unauthorised occupant from a public premises in Civil Court. It is well-settled principle of law when the Act confers power as well imposed duty on certain specified authorities to deal with the certain specified thing or situation or to discharge certain obligation then it is only those authorities or persons who can exercise that jurisdiction or power and none else can exercise those powers or jurisdiction nor perform that job or function. It is one of the trite principle of interpretation that if a special law

provides a specific remedy dealing with a particular situation, then the intention of the legislature is that other modes are closed. See in the case of *State of Uttar Pradesh v Singhara Singh and Others*, AIR 1964 SC 358. In the above mentioned case after having made reference to the cases of *Taylor v Taylor*, (1876)1 Ch. D. 426 and *Nazir Ahmed v King Emperor*, AIR 1936 PC 253, their Lordships of the Supreme Court laid it down as under:

"When a statute confers a power on certain Judicial Officer, that power can obviously be exercised only by those officers. No other officer can exercise that power, for it has not been given to him. Now the power has been conferred by Section 164 on certain Magistrates of higher classes. Obviously, it was not intended to confer the power on Magistrates of lower classes".

A reading of these observations of their Lordships of the Supreme Court clearly reveals that in respect of eviction of persons who, in the opinion of the Competent Officer, are in unauthorised occupation, the proceedings in respect of eviction can be launched under Section 4. Whether a person is in authorised possession or in unauthorised possession, the question with reference to the public premises has got to be decided only by the officers i.e. The Competent Officers as provided under Sections 4 and 5, because this power with respect to the proceedings under the Act with reference to the public premises has been conferred only on these officers and if the authority comes to that conclusion that a person is in unauthorised occupation, the order of eviction will be passed by him subject to the power of the Appellate Court in appeal under Section 10 of the Act, and this is what is provided in Section 11 also. The question whether a person is in unauthorised occupation is a question of fact decided by the authorities. It is not a question with reference to the applicability of the Act, it is a question only with reference to the exercise of power by Competent Authority to pass or not to pass the eviction order. Though the premises is a public premises but if the occupation has not been proved to be unauthorised one, instead it is shown that the possession is valid under authority or certain Legal Authority then eviction order may not be passed.

18. Section 11 clearly says that no injunction shall be granted by any Court or authority in respect of action taken or to be taken in pursuance of any action taken or to be taken in pursuance of any power conferred by or under this Act. The section first clearly bars the jurisdiction of the Civil Court to entertain any suit for injunction restraining the authorities from acting under the law. Section 16 also provides that Civil Court will have no jurisdiction to entertain any suit in respect of eviction. On one hand, it deprives the remedy for eviction otherwise then provided under the Act, on the other hand, it also deprives the jurisdiction of the Civil Court to entertain a suit challenging the orders passed by the authorities under and within the scope of the Act for eviction of the unauthorised occupants or with reference to matters covered by it. It means, it deprives and debars the Civil Court from entertaining any suit with reference to the matters of eviction of a person who is said to be in unauthorised occupation. Section 17

further supports the proposition and it clearly says neither any prosecution nor any suit shall lie against the State Government or any authority including Competent Authority. This again reveals that if the authority under the Act is proceeding or intends to initiate proceedings or intends to take action, no suit can be filed to deprive it from taking action under the Act as per Section 17. The question whether a person is in authorised occupation or his occupation is one under authority has been conferred with reference to the public premises on the Competent Authority. That being the position, in my opinion, the Civil Courts and their jurisdiction are barred from entertaining the question. The occupant can only challenge the allegation made in the notice i.e. the unauthorised occupation by showing cause and prove his title or in appeal before the District Judge or he may have any other remedy where a case may be one of jurisdiction such as proceedings under 226 where a person can show that the finding is based on no evidence and the finding is based on ignorance or non-consideration of material and admissible evidence or finding has been arrived otherwise or other similar ground.

19. It appears that lower Appellate Court has gone astray in thinking as if it was deciding appeal from the order of Competent Officer under Section 11. The order of the Competent Authority was not in challenge before him. The sole question was whether suit was barred or not. As I have observed, the Act applies to the public premises, when the Act applies to the public premises, no proceedings could be taken with reference to the matter of eviction from public premises in the Civil Court either by obtaining injunction restraining the said authorities from proceeding under the Act nor the authorities should file suit for eviction in the Civil Court.

20. In my opinion, the plaintiffs suit as such for the relief of declaration was misconceived and not maintainable in view of the provisions of Sections 11, 16 and 17 of the Act. The Appellate Court appears to have exceeded the jurisdiction when it had entered into the merits of the question whether plaintiff-respondent was in authorised occupation or unauthorised occupation as the power had been vested in the Competent Authority (Competent Officer) to decide that and then as Appellate Court under the Act, it could be exercised by the District Judge.

21. The case relied by the learned Counsel for the respondent, namely, *Indian Bank v M/s. Blaze and Central (Private) Limited*, 1986(1) Kar. L.J. 260, is not of any assistance to the respondents so far as the question involved in the case is concerned and it does not touch the question of applicability of the Act and the question of maintainability of the present suit.

22. In this view of the matter, I am of the opinion that the order of remand suffers from error of law and of jurisdiction. The order of remand as such is set aside. It is held hereby that suit is misconceived and was not entertainable by Civil Court and it was rightly dismissed by the Trial Court. All the three appeals filed by the defendants-appellants are allowed and the order of the Trial Court dismissing the suit as not maintainable is maintained but on the reasonings

herein given by this Court.

23. All the three appeals are allowed. The costs of the three appeals are made easy.