


<p>MHKO010025692022</p> 	<p><u>Order below Exh.5 in Reg.Civil Appeal No.115/2022</u></p> <p>Mussa Ibrahim Shaikh Proprietor – Chatrapati Pramilaraje Tea Stall.</p> <p><i>Versus</i></p> <p>1) Resident Deputy Collector, Kolhapur and others</p>
---	---

1) The appellant has filed present application to stay the order passed by respondent No.1 in Eviction Case No.5/2021 dated 20/06/2022.

2) Being aggrieved by the said order, appellant prayed to stay execution of the order dated 20/06/2022, passed in Eviction Case No.5/2021 on the following grounds -

i) The notice issued by respondent No.1 is not as per the provision of law.

ii) The respondent No.1 having no any legal authority to issue notice and also having no right to pass an order against appellant.

iii) The grounds mentioned in eviction notice and grounds mentioned in order under appeal is altogether different.

iv) There is no any danger to oxygen tank and pipe line or no any parking obstruction, encroachment because of the appellant's business.

v) The respondent is not competent authority within the scope of Bombay Public Premises Eviction Act.

vi) The order passed by the respondent also suffer from jurisdictional error in the eye of law.

vii) Respondent No.1 passed the order arbitrarily.

viii) The Act does not provide any machinery and as the Act does not appoint the competent authority under the Bombay Public Premises Eviction Act no proceedings can be commenced against the appellant.

ix) The appellant is in possession of the disputed property as a authorized person to conduct business and tenant in the disputed property from many years.

x) The order under Sections 4 and 5 of the Bombay Public Premises Eviction Act passed by the respondent is in violation of the rule of precedent.

xi) The initiation of proceeding under Sections 4 and 5 at the instance of respondent No.2 is against the violation of principles of natural justice.

xii) The appellant does not only have prima facie case, balance of convenience and equity is in favour of appellant as the appellant is in possession of disputed property and they are carrying on business for more than 30 years. If the implementation, operation and execution of an order is not stayed in that case appellant will suffer irreparable loss.

3] As against this, if the order is stayed, no prejudice likely to be caused to the respondents. Caveat notice is received by present appellant. Hence, under above facts and circumstances, the order passed by respondent No.1 in Eviction Case No.5/2021, dated 20/06/2022 be stayed till disposal of the appeal.

4] Respondent No.2 and No.1 filed their say vide Exh.15 and Exh.18 and objected stay application on the following grounds -

i) The appellant is trespasser and he has made illegal encroachment on the government premises. The appellant has never been authorized to do business in the disputed property. The appellant is unauthorized encroacher. As such the appellant is liable to be evicted from the government premises as per the provisions of law and respondent No.1 being the competent authority has passed just, legal and valid order to evict the appellant from the government premises.

ii) The notice calling upon the appellant to show cause as to why he should not be evicted and the notice calling upon the appellant to vacate the premises are legal and valid.

iii) Respondent No.1 is competent authority under the Bombay Government Premises Eviction Act, 1955 appointed vide the Government Notification G.N.,U.D. & P.H.D.No. EVC.1164/40217-E, dated 1st February 1955 (M.G., Part IV-B, pages 463) by the Government of Maharashtra, in exercise of the powers conferred by Section 3 of the Bombay Government Premises Eviction Act, 1955 for carrying out the purposes of the Act in respect of all Government premises in the areas within its jurisdiction. Therefore, respondent No.1 has legal authority to carry out all the acts under the said Act.

5] Hence, application for Stay filed by the appellant be rejected with costs.

6] In above facts and circumstances, following points arise for my consideration. I have recorded my findings with reasons thereon as follows.

Points		Findings
1.	Whether the appellant is entitled for stay to the order passed by respondent No.1 in Eviction Case No.5/2021, dt.20/6/2022 till disposal of the appeal ?	Partly affirmative
2.	What order ?	Application is allowed.

REASONS

As to Point Nos. 1 and 2:

7] To prove the case, the applicant has filed list of document vide Exh.3, which includes information of the order of respondent No.1 dated 20-

06-2022, Judgment passed by the respondent No.1 in Eviction Case No.5/2021, dated 20/06/2022, notice issued to the appellant by respondent No.1 on 21/12/2021 and photographs. The appellant also filed on record list of documents vide Exh,13, which includes Judgment and Decree in Reg. Civil Suit No.277/2017, registration certificate issued by the Food and drug Administration, Maharashtra State, registration certificate issued by Ministry of Micro, Small and Medium Enterprises.

8] The respondent No.1 filed on record the copy of Caveat Appln. No.235/2022 and respondent No.2 filed list of document vide Exh.20, which includes copy of Judgment of the learned Civil Judge, Sr.Dn., Kolhapur in Reg.Civil Suit No.277/2017.

9] Learned counsel for the appellant Mr.R.A.Mehata argued that the grounds mentioned in the order in respect of Oxygen tank, parking obstruction, encroachment and premises required for Government purpose was not mentioned in eviction notice and no any evidence was also produced by the respondent. The respondent is not competent authority as per Bombay Public Premises Eviction Act. The order passed under Sections 4 and 5 of the Act by respondent No.1 is in violation of the rule of precedent. The ratio laid down by the Hon'ble Supreme Court in **2003 MLJ 712 and 1969 Vol.3 SCC 415 and AIR 1994 Delhi 181** and directions given by the Hon'ble High Court in that authority is binding upon respondent No.1, but the said directions have not been considered and therefore, considering the above said authorities, the order of the respondent is violation of law and bad in law. Hence, the order passed by respondent No.1 in Eviction Case No.8/2021, dated 20/05/2022 may be stayed till disposal of the appeal.

10] Learned A.P.P. for the respondent No.1 and 2 – Mr.

Mahadeshwar argued that respondent No.2 already filed caveat application No.235/2022 on 29/06/2022. The learned A.P.P. argued that respondent No.1 being the competent authority and has passed a just, legal and valid order. The appellant was given full opportunity to raise their defence available to him. The appellant was given opportunity to cross-examine the witness to respondent No.2. The appellant was given opportunity to lead evidence and to argue their case. The respondent No.1 is competent authority under the Bombay Government Premises Eviction Act, 1955 appointed vide the Government Notification G.N.,U.D. & P.H.D.No. EVC. 1164/40217-E, dated 1st February 1955 (M.G., Part IV-B, pages 463) by the Government of Maharashtra, in exercise of the powers conferred by Section 3 of the Bombay Government Premises Eviction Act, 1955 for carrying out the purposes of the Act in respect of all Government premises in the areas within its jurisdiction. Therefore, respondent No.1 has legal authority to carry out all the acts under the said Act.

11] Learned A.P.P. Mr.Mahadeshwar further argued that the appellant is an encroacher and trespasser. The appellant is never authorized to occupy and possess the premises under his possession within the precincts of the Government Premises. The appellant is never a tenant in the disputed property. The appellant had filed a civil suit against the respondent wherein he had claimed injunction against the respondent. The said suit No. 277/2017 was decided by the learned Civil Judge, Sr.Dn., Kolhapur. The learned Civil Court held that the appellant had made illegal encroachment in the Government premises. The said observation has not challenged by the appellant before any appellate Court. Therefore,, the same has attended the finality. As such the appellant is estopped from contending tenancy in the Government premises. Therefore, there are no merits in the present application and as such same application liable to be dismissed.

12] As per provisions of the Section 9 of the Bombay Government Premises Eviction Act, no legal proceeding can be filed against the competent authority in respect of the action taken under the provisions of said Act. The appellant has wrongly impleaded the respondent No.1 as a party in the present appeal. Therefore, the application for stay is not maintainable. The application for stay devoid of merit and as such is not entitled any of the relief claimed. So that, said application be rejected with costs.

13] Learned A.P.P. Mr.Mahadeshwar further relied upon the matter of *Subhash Vishwanath Kolapkar Vs. The Assistant Collector, reported in 2009 (2) Mh.L.J.50*, wherein the Hon'ble High Court held that -

“Maharashtra Municipal Council, nagar Panchayats and Industrial Townships Act, 1965. Section 100(A). Eviction proceeding. It is incumbent on Authority to observe principles of Natural Justice. Procedure is summary in nature. Full-dressed trial not necessary.”

14] Learned A.P.P. Mr.Mahadeshwar relied upon the matter of *Khimjibhai Haribhai Bharwad Vs. State*, reported in *1994 Supreme (Guj) 69*, wherein the Hon'ble High Court held that -

“Appellants admittedly unauthorised occupants on the government land which was occupied by it under 1976 Act fee from all encumbrance. Contention that proceedings under P.P.Act of 1972 not initiated. Held, no serious prejudice caused by not taking recourse to P.P.Act of 1972. No stay can be granted to encroachers. Proved that government occupied land free from any encumbrance.”

“ Encroachers like the appellants are violaters of the law. They are occupying public land, admittedly without a semblance of right or title. The government is the rightful owner thereof and is, therefore, entitled to get back vacant possession of the land, specially when the provisions of the Urban Land (Ceiling and Regulations) Act, 1976 clearly provide that the land vests in the Government free of all encumbrances after the said land has been declared as surplus. It will not be proper exercise of the discretion to grant an injunction

or stay, which will have the effect of permitting an unauthorised occupant to continue to remain in unauthorised occupations and would prevent the original owner from getting back the possession. The abuse of the process of the law must be stopped and unless and until it can be shown that serious prejudice, on merits, is caused by not taking recourse to the P.P.Act, no injunction or stay should be granted, which will have the effect of protecting an unauthorised occupant of public property.

15] The learned counsel for the appellant are argued that the facts and circumstances in the Judgments cited by learned APP are different and not applicable to the present case.

16] In the above facts and circumstances, this Court found that the appellant filed Reg.Civil Suit No.277/2017 before the learned Joint Civil Judge, Sr. Dn., Kolhapur challenging the notice issued by the original defendant No.1/respondent No.2, wherein the appellant also prayed for injunction. Said suit was decreed in favour of the appellant and it was held that the notice issued by respondent No.1 to the appellant/original plaintiff on 25/03/2017 (Notice at Exh.21) was not binding on the plaintiff. After that this Court found that the Judgment passed by the respondent No.1 in Eviction Case No.05/2021, dated 20/06/2022 under Section 4 and 5 of the Bombay Government Premises Eviction Act. Issues raised in the said Judgment about the jurisdiction of respondent No.1 and 2 and issue of encroachment and safety of the hospital premises. It is also found that the appellant and respondent No.2 lead the evidence before the respondent No.1 in Eviction Case No.5/2022. Respondent No.1 held that the appellant illegally possessed and encroached in the premises of respondent No.2. Respondent No.2 required the place for Government purpose and object. The respondent No.1 held that the appellants committed encroachment illegally to the premises of Chatrapati Pramilaraje Hospital, which is Government hospital. The respondent No.2 raised the issues of possession

and safety of the hospital. The appellant also raised the issue that if he forcefully evicted without following due process of law, then he would suffer irreparable loss.

17] The learned counsel for the appellant argued that he is ready to proceed with the final hearing of appeal if stay order is granted. Hence, stay may be granted till disposal of the appeal.

18] In the above facts and circumstances, it is found that the appellant is ready to proceed with the final argument on the appeal and till that period, the appellant wanted to stay the order of respondent No.1 passed on dt.20/06/2022 in the Eviction Case No.5/2021. The appellant is directed to proceed with the final hearing of appeal. Hence, I answer Point No.1 in partly affirmative and proceed to pass following order.

- **ORDER** -

1. Application at Exh.5 is hereby partly allowed on following terms and conditions.
 - i) The execution of order passed in Eviction Case No.5/2021, dated 20/06/2022 by respondent No.1 is stayed for the period of 4 (Four) weeks.
 - ii) The appellant to argue the appeal (final hearing) within three weeks, failing which the stay order granted by this Court stands vacated automatically.
2. Call Record and Proceeding of the case.
3. Application at Exh.5 is disposed of accordingly.

Date :- 03/08/2022

(Shailendra Tambe)
District Judge-3, Kolhapur.