

ORDER BELOW EXH. 65 IN PPE APPEAL NO. 11/2022

1] This is an application for appointment of receiver filed under order XL of Cr.P.C. by Ashok Shankar Gaikwad and Mrs. Malan Ashok Gaikwad. It is contended that being aggrieved and dissatisfied by the eviction order dtd. 10/11/2021 passed by respondent no. 2, appellants have preferred this appeal.

2] It is pointed out that mother of appellant no.1 i.e. late Parvati Shankar Gaikwad was the lessee in the property i.e. land bearing Plot No. 52,admeasuring to the extent of 50.05 sq. mtrs. and shed constructed thereon in S.No.3, of village Ghorpadi, Tal.Haveli, Dist.Pune. Parvati Gaikwad expired on 27/08/2011 and after her death appellants being her legal heirs are in possession of the said property and are running the business in the said premises. After the death of Parvati Gaikwad the appellant no. 1 has orally informed the then officers of Central Railway about the death of Parvati Gaikwad. Appellants have paid all the taxes and fees due towards them. It is contended that the appellants have paid the advance rent for the period starting from 1/4/2021 till 31/3/2022. Thereafter in the month of June 2021 some railway officials visited the shop and inquired about Parvati Gaikwad. That time appellant no. 2 told them that she has expired on 27/8/2011. Suddenly

respondent no. 2 i.e. The Estate officer Central Railway, Pune division had issued a notice to appellant under sub section (1) and clause (b)(ii) of sub section 2 of section 4 of Public Premises Act, 1971. As per the notice appellant no.1 attended the Court of respondent no. 2 being the legal heir of Parvati Gaikwad but he was not given any opportunity of hearing stating the reason that he is unauthorized occupant. Thereafter respondent no. 2 passed order dtd. 10/11/2021 under sub section (1) of Sec. 5 of the Public Premises(Eviction of Unauthorised occupants)Act,1971 against the appellant and asked to vacate the premises. It is contended by appellant that the Estate officer had not taken into consideration the guidelines issued by the Govt. of India Ministry of Railways, Railway Board, No.2001/LML/14/1 dated 5/4/2004 for prevention of arbitrary use of the Public Premises Eviction Act and its proceedings to evict the genuine tenants. Therefore appellants have prayed to set aside the order passed by the Estate officer on 10/11/2021.

3] Respondents have resisted the application by filing reply at exh. 66 contending that deceased Parvati Shankar Gaikwad was allotted with the disputed premises but after her death legal heirs of Parvati Gaikwad have not informed respondents about her death and they have not executed leave and license of disputed property with respondents. Hence according to respondents legal heirs of deceased Parvati Gaikwad are unauthorized occupants over

disputed premises and they have no authority to continue their possession with said property. It is contended that appellants are paying the annual rent of the property to the respondents but as per respondent no. 2 said amount is deposited towards unauthorized occupancy charges. It is contended that the land in question is required by PMC for construction of road over bridge and same is to be handed over to PMC. Hence it is contended that respondents have never told that the land in question is required to PMC hence license fees bills are not issued. With the help of those contentions respondents have prayed to reject the application.

4] It is pertinent to note that order XL of CPC provides appointment of receiver and it provides that (1)Where it appears to the Court to be just and convenient, the Court may by order--

(a) appoint a receiver of any property,

(d)confer upon the receiver all such powers, as to bringing and defending suits and for realization, management, protection, preservation and improvement of the property, the collection of rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

5] Appellants' advocate argued that respondents are

not issuing the bills for license fees therefore, appellants are required to file this application for appointment of Court receiver or for directions to respondents to accept the license fees. It is pertinent to note here that respondents have alleged that LR's of deceased are unauthorized occupants of the property in question. Hence, I find that no question arises of directing the respondents to accept the license fees, issue the demand bills for license fees and to accept the license fees from LR's of deceased Parvati Shankar Gaikwad.

6] Considering the fact that this is the appeal under PPE Act, no question arises of appointing Court receiver in this case. Hence, I pass following order.

ORDER

Application exh. 65 stands rejected.

Date : 13/06/2024.

[K.P .Nandedkar]
District Judge-1,
Pune.

CERTIFICATE

I affirm that the contents of this P.D.F. file judgment are same words for words as per original Judgment.

Name of steno : V.A.Nagarkar (Stenographer Grade 1)
Name of the Court : K.P.Nandedkar, District Judge -1 & Additional Sessions Judge, Pune
Date of Order : 13.06.2024
Order signed by P.O. on: 19.06.2024
Order uploaded on : 19.06.2024