

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2174 OF 2024

(Shama widow of Late Shri Laxman Kondagurle vs. The Union of India and others)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr.S.V.Bhutada, Advocate for the petitioner.

Mr.N.S.Deshpande, Deputy Solicitor General of India for
respondent Nos.1 and 2.

Mr.N.S.Rao, Assistant Government Pleader for the respondent
No.3.

CORAM : BHARATI DANGRE AND ABHAY J. MANTRI, JJ.

DATE : SEPTEMBER 26, 2024

A preliminary objection is raised by the respondents in their affidavit-in-reply that an alternative remedy in the form of an appeal before the District Judge is available against the order passed by the Education Officer under Section 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "the P.P.Act")

2) In our view, the preliminary objection is not liable to be entertained in view of two circumstances; first, it is the case of the petitioner that there is violation of principles of natural justice and second, there is a jurisdictional issue as Mr.Bhutada, learned Counsel appearing for the petitioner, has placed reliance on paragraph 50 of the decision of Apex Court in the case of ***Kaikhosrou (Chick) Kavasji Framji vs. Union of India (2019) 20 SCC 705***, to the effect that when a bona fide dispute on the question of ownership of the suit property arises,

then the power under Section 4 of the P.P.Act, which is simplicitor remedy for seeking eviction, cannot be adhered to.

3) The specific submission of learned Counsel Mr.Bhutada relying upon the agreement dated 21/11/1978 executed between the Governor of Maharashtra "Grantor" and Predecessor Mr.Laxman Rajan Kondagurle, the husband of the petitioner who was "Grantee", clearly records that since the Grantee has encroached upon the piece of Government land for the purpose of cultivation/residential house, the particulars of which are set out in the Schedule and the Grantee unequivocally admits title of the Grantor to the said land and upon request made to Grantor to grant the said land to him in occupancy right under Section 31 of the Land Revenue Code, 1966 on payment of occupancy price of the said land and assessment as provided in Section 51 of the said Code, the Grantor had granted the land to the Grantee in "Occupancy Rights" subject to several stipulations, which included payment of the occupancy price as well as the amount of assessment clearly stipulated. The Grantee was imposed an embargo of not using the land for any other purpose other than residential house without the permission of the Collector.

4) Relying upon the said agreement, it is the contention of learned Counsel Mr.Bhutada that there is no scope, which is available for entertaining the proceedings under Section 4 or 5 of the P.P.Act and since the impugned order is without jurisdiction, the writ petition should be entertained and the impugned order passed by the respondent No.2 may be set aside.

- 5) We expect the Union of India as well as the Estate Officer under the P.P.Act to take their time as the submission advanced on their behalf is about the ownership of the Union of India over its property and if the dispute pertains to ownership, then definitely the appropriate remedy would be institution of the civil suit.
- 6) Mr.Deshpande, learned Deputy Solicitor General of India shall obtain necessary instructions from respondent Nos.1 and 2 within a period of three weeks from today.
- 7) Interim order granted earlier shall continue to operate till next date.
- 8) Re-notify on **18/10/2024**.

(ABHAY J. MANTRI, J.)

(BHARATI DANGRE, J.)