



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6715 OF 2021

Vishwas Krishnarao Gangurde **...Petitioners**
since deceased through his legal
representatives-
1 -Smt. Madhura Vishwas Gangurde
and Ors.

V/s.

Bank of India and Anr. **...Respondents**

Mr. Sagar Bhirange *for the Petitioners.*

Mr. Sunil M. Kadam *for the Respondents.*

CORAM: SANDEEP V. MARNE, J.

RESERVED ON: 16 FEBRUARY 2026.

PRONOUNCED ON: 26 FEBRUARY 2026

JUDGMENT:

1) By this Petition filed under Article 227 of the Constitution of India, the Petitioners assail the judgment and order dated 25 February 2021 passed by the learned District Judge 1, Pune in Public Premises Eviction Appeal No.10 of 2019. By the impugned judgment and order, the Appeal preferred by the Petitioner has been dismissed, thereby confirming the eviction order dated 8 July 2019 passed by the Estate Officer. By the eviction order, Petitioner has been directed to vacate the premises in question by handing over possession thereof to the Respondent-Bank.

2) Shop No. 1 situated on the ground floor of the structure situated at City Survey No. 761(old city survey no.607) Sadashiv Peth, Pune comprising of two rooms and admeasuring 120 Sq. ft are the suit premises. The suit premises are located in the structure owned by the Bank of Karad. Shri. Dattatray Baburao Doiphode was the tenant in respect of the suit premises. The Bank of Karad filed Suit No. 2914 of 1969 in the court of Small Causes, Pune, seeking eviction of Shri. Dattatray Baburao Doiphode *inter alia* on the ground of *bonafide* requirement and for reconstruction of the structure by demolishing the old structure. Eviction was also sought on the ground of nonpayment of rent. The Suit came to be dismissed by judgment and decree dated 25 August 1971. The Bank of Karad filed Civil Appeal No. 954 of 1971 challenging the decree of the Trial Court. The Appeal was allowed by the District Court by judgment and order dated 12 September 1972 directing the tenant-Shri. Dattatray Baburao Doiphode to vacate the tenanted premises on the ground enumerated in Section 13 (1)(hh) of the Bombay Rents, Hotels and Lodging Houses Rates Control Act, 1947. **(the Bombay Rent Act)**. The eviction was thus ordered for *bonafide* and reasonable requirement of immediate demolition of the suit structure and for construction of the new building. Bank of Karad filed Execution Petition No. 221 of 1973 in the court of Small Causes, Pune. However, the Execution Petition was dismissed for failure to take steps for execution of the possession warrant by order dated 16 March 1989.

3) According to the Petitioner, he entered into Assignment Agreement with the original tenant-Shri. Dattatray Baburao Doiphode on 25 August 1992 for transfer of tenancy rights along with goodwill,

stock-in-trade and right to occupy the premises. The Petitioner claims to be put in possession of the premises in pursuance of Assignment Agreement dated 25 August 1992, subject to the eviction proceedings.

4) Bank of Karad Ltd. was merged/ amalgamated with Bank of India pursuant to the amalgamation dated 6 March 1994. According to the Petitioner, though the premises were assigned, there was no attornment of tenancy and Petitioner did not receive any notice of change of landlord from the Bank of India. The Respondent Bank issued notice dated 12 June 2019 under sub-section (1) of Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (**PP Act**) seeking possession of the premises on the grounds of occupation by the Petitioner, nonpayment of rent for many years and requirement of the Bank for its own use. Petitioner sent reply dated 16 July 2019 to the notice refuting the allegations therein. The Estate Officer of the Bank (Respondent No. 2) proceeded to pass order dated 8 July 2019 directing eviction of the Petitioner.

5) Aggrieved by the eviction order dated 8 July 2019, the Petitioner filed Appeal under Section 9 of the PP Act before District Judge, Pune, which was numbered as Public Premises Eviction Appeal No.10 of 2019. Petitioner filed application for stay to the eviction order and the District Court passed order of *status quo* on 1 March 2021, which was extended from time to time. Respondent Nos. 1 and 2 filed reply resisting the application for stay. The District Court proceeded to dismiss the appeal by judgment and order dated 25 February 2021, which is the subject matter of challenge in the present Petition. By order dated 25 October

2021, this court directed maintenance of *status quo*, which protection has been continued from time to time and operates till date. During pendency of the Petition, Petitioner has passed away and his legal heirs have been brought on record. The Petition is taken up for final hearing and disposal with the consent of the learned counsel appearing for the parties.

6) Mr. Bhirange, the learned counsel appearing for the Petitioners submits that the learned District Judge has erred in dismissing the appeal preferred by the Petitioner without appreciating the position that the very notice issued to the Petitioner was itself in contravention of provisions of Section 4 of the PP Act. That two out of the three grounds for eviction enumerated therein were vague and lacked material particulars. That 'you are occupying the premises' cannot be a ground for eviction. That 'non-payment of rent since many years', is again absolutely vague, lacking material particulars. That Petitioner's earlier tenant was unable to deposit rent on account of lack of certainty about the exact entity to whom rent was required to be paid. He relies upon sub-section (3) of Section 7 of the PP Act in support of his contention that a specific notice is required to be given before demanding the arrears of rent. That no notice was given under Section 7(3) of the PP Act before seeking eviction on the ground of non-payment of rent. So far as the third ground of *bonafide* requirement is concerned, Mr. Bhirange would submit that the issue is already settled by decision of Suit No. 2914 of 1969. That the ground of *bonafide* requirement is specifically rejected by the Small Causes Court. That thereafter it is no longer open for the Respondent to again raise the

ground of the *bonafide* requirement since the findings recorded by the Small Causes Court would prevail over the proceedings under the PP Act and in any case, would bind the Estate Officer.

7) Mr. Bhirange further submits that the Petitioner is a protected tenant in respect of the suit premises and cannot be unceremoniously thrown out by following the summary procedure under the PP Act. That the issue of eviction of protected tenant under Section 13 of the Bombay Rent Act has already been assailed and already adjudicated by the rent court. That therefore the only ground for which possession can be sought from the Petitioner is under Section 13 (1)(hh) of the Bombay Rent Act i.e., for demolition of existing structure and for reconstruction of any structure. That it is therefore not open to the Bank to seek eviction contrary to the ruling given by the rent court. He relied on judgment of the Apex court in *Dr. Suhas H. Pophale V/s Oriental Insurance Co. Ltd.*¹ in support of his contention that protected tenant of premises subsequently taken over by the Government cannot be evicted under the PP Act. Mr. Bhirange however fairly invites attention of this court to the latest judgment of the Apex court in *Life Insurance Corporation of India and Anr. V/s Vita*².

8) Mr. Bhirange further submits that the Petitioner has lawfully purchased the entire business along with the goodwill from the original tenant and that therefore, there is no element of subletting involved in the present case. Mr. Bhirange further submits that the eviction order clearly exceeds the grounds specified in notice issued under Section 4 of

1 AIR 2014 SC 1509

2 2025 SCC OnLine SC 2772

the PP Act. He submits that subletting is not the ground alleged in the eviction notice and therefore could not have been relied on while passing the final eviction order. In support, he has relied upon judgment of Division Bench of Jammu and Kashmir High Court in ***Dr. Yash Paul Gupta V/s Dr. S. S. Anand and Ors***³. On the above broad submissions, Mr. Bhirange prays for setting aside the order passed by the District Court and by the Estate Officer.

9) The Petition is opposed by Mr. Kadam, the learned counsel appearing for the Respondent, who submits that the issue of non-availability of protection of Rent Act in respect of premises purchased by Government/PSU is no longer *res-integra* and is covered by the judgment of the Apex Court in ***LIC V/s Vita*** (supra). He further submits that Petitioner himself is a sublettee, who has come in possession of the premises by means of unauthorized purchase of tenancy without the consent of the landlord. That the Petitioner himself does not occupy the premises and it has come in evidence that the premises are actually in possession of one-Supriya Shreyash Kamble, who runs business under name of M/s. Isha's Collection. That the Respondent produced Shop Act license of Ms. Kamble to prove her occupation at the premises. He submits that the date of 24 June 2018 stated in the notice issued under Section 4 of the PP Act is mere typographical error and the hearing was actually fixed on 24 June 2019. That Petitioner himself raised this issue while submitting its reply on 16 July 2019 and thereby participated in the proceedings without any demur. That the hearing of the proceedings was adjourned on two different dates and ultimately

³ AIR 1980 J&K 16

eviction order was passed on 8 July 2019. He submits that full opportunity was offered to the Petitioner by the Estate Officer. He further submits that non-payment of rent in respect of the premises is also an admitted position. That the learned District Judge has appreciated the factual position and has accordingly dismissed the appeal preferred by him. He submits that no interference is warranted in the impugned order passed by the District Judge. He would pray for dismissal of the Petition.

10) Rival contentions of the parties now fall for my consideration.

11) Petitioner claims to be an assignee of the premises let out by Karad Bank Ltd. to Shri. Dattatray Baburao Doiphode, who enjoyed the status of statutory tenant. Petitioner relies upon Sale Deed dated 25 August 1992 in support of his contention that he has purchased goodwill and stock in trade together with right to occupy the premises from the tenant-Dattatray Baburao Doiphode. The sale deed describes Shri. Dattatray Baburao Doiphode as tenant of Karad Bank Ltd., in which he was running the business of Lonkar Shoe Mart. The Petitioner claims to have purchased the goodwill in the said business -Lonkar Shoe Mart alongwith stock-in-trade, furniture etc. The sale deed was shown to have been executed subject to execution of the decree passed in Suit no. 2914 of 1969. As observed earlier, the Suit was originally dismissed by the Small Causes Court and the Appellate Court partly decreed the same under Section 13 (1) (hh) of the Bombay Rent Act directing the tenant to handover possession of the premises for the

purpose of demolition of old structure and reconstruction of new structure. Karad bank Ltd. had filed execution proceedings, which were dismissed for failure to take steps for service of possession warrant. This is how the tenant had continued in occupation of the premises even after passing of the eviction decree. Petitioner claims that he has purchased goodwill, stock-in-trade and tenancy rights in respect of the premises from the tenant-Shri. Dattatray Baburao Doiphode. Karad Bank Ltd. is not party to the said Sale Deed and the transaction is apparently executed behind the back of the landlord.

12) The Respondent-Bank of India has purchased the assets and liabilities of Bank of Karad which includes the premises of CTS No. 761 (old No. 607) Sadashiv Peth, Pune vide registered Deed dated 19 December 2006. After acquiring title in respect of structure in which the premises are located, Respondent-Bank issued notice dated 12 June 2019 to the Petitioner, which reads thus:

NOTICE

To Vishwas Gangurde,
~~Shri Dhananjay Mahadeo Mule~~
CTS No. 761, Sadashiv Peth,
Kumthekar Road,
Pune-411030

Whereas I, Rajesh Ingle, Zonal Manager and Estate Officer, Bank of India, Pune Zone, am of opinion, on the ground specified below, that you are in unauthorized occupation of the public premises mentioned in the Schedule below and that you should be evicted from the said premises.

GROUND

- 1) You are occupying the premises, ~~despite eviction decree passed against you.~~
- 2) You have not paid rent of the premises since many years

3) The landlord, Bank of India, requires the premises for its own use.

Now, therefore, in pursuance of sub-section (1) of section 4 of Public Premises (Eviction of unauthorized occupants) Act 1971, I hereby call upon you to show cause on or before 21.06.2019 why such an order of eviction should not be made.

In pursuance of clause (b) (ii) of subsection (2) of Section 4, I also call upon you to appear before me in person or through a duly authorized representatives capable to answer material questions connected with the matter along with the evidence which you intend to produce in support of the cause shown on **24.06.2018 at 11.30 a.m. at Bank of India, Pune Zonal Office, 1162/6, Shivajinagar, near Observatory, University Road, Pune-411005 for personal hearing.**

In case, you fail to appear on the said date and time, the case will be decided exparte.

SCHEDULE

Shop premises situated on ground Floor at CTS No.761, Sadashiv Peth, Kumthekar Road, Pune-411030.

Date: 12th June 2019

13) The notice issued under section 4(1) of the PP Act specified three grounds for seeking eviction of the petitioner (i) occupation of premises by the petitioner (ii) non-payment of rent for many years (iii) requirement of Bank of India of the premises for its own use. Under Section 4 of the PP Act, the Estate Officer needs to issue a notice upon receipt of information regarding unauthorized occupation of public premises to show cause as to why an order of eviction should not be made. The notice must specify the ground(s) of eviction, which is proposed to be made and must provide the opportunity to the noticee to appear before the Estate Officer and show cause. Section 4 of the PP Act provides thus:

4. Issue of notice to show cause against order of eviction. —

(1) If the estate officer has information that any person is in unauthorised occupation of any public premises and that he should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing within seven working days from the date of receipt of the information regarding the unauthorised

occupation calling upon the person concerned to show cause why an order of eviction should not be made.

(1A) If the estate officer knows or has reasons to believe that any person is in unauthorised occupation of the public premises, then, without prejudice to the provisions of sub-section (1), he shall forthwith issue a notice in writing calling upon the person concerned to show cause why an order of eviction should not be made.

(1B) Any delay in issuing a notice referred to in sub-sections (1) and (1A) shall not vitiate the proceedings under this Act.]

(2) The notice shall—

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises,—

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not 5[later than] seven days from the date of issue thereof, and

(ii) to appear before the estate officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.

(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

14) The Notice under Section 4 was issued on 12 June 2019 and the date of hearing was fixed as ‘24 June 2018’. It is therefore contended on behalf of the Petitioner that the Notice itself was faulty and that the Petitioner was denied an opportunity of hearing which is mandatory under Section 4 of the PP Act. Mr. Kadam has however clarified the position by contending that the year ‘2018’ is indicated in the date fixed for hearing in the notice by way of an inadvertent error and the hearing

was actually fixed on 24 June '2019'. I am inclined to accept the justification for variety of reasons. Firstly, Petitioner replied the notice on 16 July 2019. He failed to raise any grievance with regard to fixation of hearing on '24.06.2018'. Petitioner thus rightly understood that the hearing was actually fixed on 24 June 2019. Far from raising any issue relating to the date, Petitioner actually dealt with the grounds of eviction on merits. Even in Appeal Memo filed before the District Court, Petitioner did not raise the issue of fixation of date of hearing on 24 June 2018. It was not the case of the Petitioner either before the Estate Officer or before the District Judge that no hearing was ever conducted or that hearing was already conducted before the issuance of the notice. On the contrary, the eviction order indicates that the notices were issued to 8 different occupants in respect of 8 different premises. Except the Petitioner, all other noticees appeared before the Estate Officer. As observed above, Petitioner submitted his response to the show cause notice. It appears that other occupants requested for adjournment of hearing and accordingly two dates of hearing were fixed by the Estate Officer. Therefore, mere inadvertent error in the year of hearing reflected in show cause notice does not enure to the benefit of the Petitioner.

15) The next ground urged by the Petitioner is that the show cause notice was vague and lacked material particulars. It is contended that the first ground for eviction of '*occupation of premises by the Petitioner*' cannot be ground of eviction. I am unable to agree. What is meant in ground no. 1 is that though the tenant in respect of the premises was Shri. Doiphode, Petitioner was found to be in occupation

of the premises. Thus, the reason of subletting is actually reflected in the first ground. Petitioner was required to show in authority in which he entered into the premises and was occupying the same. The Petitioner fully understood this ground and accordingly submitted his response relying on Sale Deed dated 25 August 1992. Petitioner thus attempted to show the authorized nature of his possession of the premises and it therefore cannot be contended that the first ground of eviction reflected in the show cause notice is vague as sought to be alleged.

16) The second ground of eviction in the show cause notice was about non-payment of rent for many years. Mr. Bhirange fairly accepts the position that the Petitioner or the tenant-Doiphode had not paid any rent in respect of premises for quite some time. He however submits that “non-payment” of rent was clearly attributable to the actions of the earlier landlord-Karad Bank Ltd., which had gone in liquidation and there was no certainty about the exact person/entity to whom the rent was to be paid. He submits that “non-payment” of rent is not a deliberate overt act on the part of the Petitioner. In my view, “non-payment” of rent in respect of the premises is clearly fatal to the case of the Petitioner. The eviction order records that “*they also admitted that rent has not been paid by them after passing of eviction decree against them*”. As observed above, the eviction decree was passed by the Appellate Court on 12 September 1972. Thus, from 1972 till passing of Eviction Order on 8 July 2019, the rent in respect of the premises was not paid for 47 long years. Even after alleged purchase of goodwill and stock-in-trade by the Petitioner in 1992, no attempt was even made by

him to pay the rent. Once the act of non-payment of rent is admitted, Petitioner cannot be permitted to raise the ground of vagueness. The case does not involve any dispute in respect of period of non-payment of rent. There is therefore sufficient clarity in the ground of non-payment of rent in the show cause notice, which cannot be termed as vague by any stretch of imagination.

17) So far as the last ground of *bonafide* requirement of Bank of India is concerned, I am unable to accept the contention raised on behalf of the Petitioner that the finding recorded by the Small Causes Court on the issue of *bonafide* requirement of Bank of Karad would operate as res-judicata for the Estate Officer while deciding the requirement of Bank of India. No doubt, the Small Causes Court rejected the ground of *bonafide* requirement of Bank of Karad. However, *bonafide* requirement is a continuous phenomenon and even if requirement at a particular point of time is rejected, the same does not mean that *bonafide* requirement can never arise again in future. Therefore, the principle of res-judicata would not apply to a case involving continuous injury within the meaning of Section 22 of the Limitation Act.

18) So far as permissibility to evict a protected tenant under the provisions of PP Act after purchase of the premises by Government / Government organization is concerned, the issue was earlier Governed by the judgment of the Apex Court in ***Dr. Suhas H. Pophale*** (supra). However, the reference was made to the Larger Bench about correctness of the ratio in ***Dr. Suhas H. Pophale*** and the reference has been

answered by three Judge Bench decision in *LIC V/s Vita* (supra). The issue before the larger bench is captured in paragraphs 1.1 to 2 and 2.1 of the judgment, which read thus:-

1.1 The referral order dated 17.03.2015, aforementioned, reads as under,

"In these petitions, in fact, the ratio decided by the two-Judge Bench of this Court in the case of *Suhas H. Pophale vs. Oriental Insurance Company Limited and its Estate Officer*², is contrary to the decision of the Constitution Bench rendered in the case of *Ashoka Marketing Ltd. And Another vs. Punjab National Bank and Ors.*³. Therefore, these matters need to be heard by a three-Judge Bench."

Issue Under Reference :-

2. The principal question that arises for determination in this batch of matters is whether the provisions of the PP Act 1971 would prevail over the respective State Rent Control legislations, in relation to premises let out prior to the commencement of the said Act, as against the premises let out after its enforcement but before their acquisition or transfer to the Government or any statutory corporation, by which the character of such premises stood transformed into "public premises" within the meaning of the Act.

2.1 In other words, the issue that falls for determination is whether, for the purposes of application of the PP Act 1971, a valid distinction can be made between tenants who were in occupation of the premises prior to the enforcement of the said Act and those who entered into occupation subsequent thereto but before such premises were taken over by the Government or a Government Corporation, as the case may be; and whether in such cases, the operation of the PP Act 1971 is intended to be only prospective in nature.

19) The Hon'ble Apex Court held that the judgment in *Dr.Suhas H. Pophale* (supra) is in direct conflict with the ratio of the judgment of the Constitution Bench in *Ashoka Marketing Ltd. V/s Punjab National Bank*⁴ and three Judge Bench decision in *Jain Ink Manufacturing Company v. Life Insurance Corporation of India & Anr*⁵. The three Judge Bench in

4 (1990) 4 SCC 406

5 AIR 1956 SC 614

LIC V/s Vita (supra) held that the PP Act on one hand and the Bombay Rent Control Act, 1947, Maharashtra Rent Control Act 1999, Delhi Rent Control Act 1958 and other similar Rent Control Legislations, on the other hand, are special laws. It is further held that having regard to the purpose, policy and legislative intent of the PP Act, the same would prevail over State Rent Control Acts in respect of eviction of unauthorized occupants of 'Public Premises'. It is further held that the person in unauthorized occupation of public premises cannot invoke protection of the Rent Control Act. The conclusions drawn and answer to the issue in paragraphs 12 and 13 of the judgment are as under:-

Conclusions

12. In view of the foregoing discussion, reasons and analysis, the following positions of law emerges,

(a) In view of the law laid down by the Constitution Bench in Ashoka Marketing and the three-Judge Bench decision in M/s. Jain Ink, the view taken in Suhas H. Pophale which is a two-Judge Bench decision, is palpably incorrect and unjustified. Suhas H. Pophale cannot and does not hold the field.

(b) Since, the propositions laid down in Suhas H. Pophale runs contrary to the decisions laid down by the Benches of larger strength in Ashoka Marketing and M/s. Jain Ink, the same is bad in law.

(c) The ratio decidendi by the Bench of larger strength is binding on the Bench of the smaller strength, irrespective of the fact whether the judgment by the Bench of the larger strength is apriori or posterior, in point of time.

(d) A Bench of the smaller strength cannot mark a departure from the decision of the Bench of larger strength, so as to vary the ratio of the Bench of larger strength, in guise of explaining the decision of the larger Bench.

(e) It was not permissible for the two- Judge Bench in Suhas H. Pophale to interpret the statutes and lay down propositions in conflict with what was laid down by the Constitution Bench in Ashoka Marketing and by a three-Judge Bench in M/s. Jain Ink,

when the set of material facts in the background of the controversy dealt with, were similar.

(f) In laying down the propositions incongruent to and contrary to the law laid down in Ashoka Marketing, the Bench in Suhas H. Pophale disregarded the principle of stare decisis and violated the well settled law of precedent.

Answers

13. As a sequitur, this Court reiterates the propositions of law laid in Ashoka Marketing

(i) Both categories of statutes namely, the PP Act 1971 on one hand, and the Bombay Rent Control Act, 1947, Maharashtra Rent Control Act, 1999, Delhi Rent Control Act, 1958 and similar Rent Control Legislations, on the other hand, are special laws. Therefore, in order to determine as to which Act will apply in case of conflict, reference has to be made to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein. Keeping in view the object and purpose underlying both the enactments, that is, the PP Act 1971 and the Rent Control Acts, the provisions of the PP Act 1971 shall override the provisions in the Rent Control Legislations.

(ii) The PP Act 1971 and the State Rent Control Acts are special enactments in themselves. Rule generalia specialibus non derogant will not apply. Having regard to the purpose, policy and legislative intent of the PP Act 1971, the same would prevail over the State Rent Control Acts in respect of eviction of 'unauthorised occupants' of 'public premises' as defined in Section 2(g) of the Act.

(iii) The provisions of PP Act 1971, to the extent they cover the premises falling within the ambit of Rent Control Act, override the provisions of the Rent Control Act.

(iv) A person in unauthorised occupation of 'Public Premises' under Section 2(e) of the Act cannot invoke the protection of the Rent Control Act.

(v) In cases where the tenanted premises are claimed to be governed by the State Rent Control Act and the same have also become 'Public Premises' within the meaning in Section 2(e) of the PP Act 1971, for their unauthorised occupation, the PP Act 1971 will have the application.

(vi) The statutory machinery envisaged under the PP Act 1971, could be activated for recovery of possession of public premises by any Government or public entity mentioned in the definition.

(vii) The PP Act 1971 will apply to the tenancies which may have been created and in existence either before coming into force of the

Act or which may have been created subsequent to coming into the force of the Act.

(viii) Two conditions must be satisfied for the applicability as above. Firstly, the tenanted premises must fall within the purview of definition under Section 2(e) of the PP Act 1971. Secondly, the premises should have been in unauthorised occupation.

(ix) Termination of tenancy of 'Public Premises' by issuing notice under Section 106 of the Transfer of Property Act, 1882 is one of the modes which would render the occupation of the tenant unauthorised, post the date specified in such notice. This would hold true in respect of tenancies created before or after coming into force of the PP Act 1971.

(x) Invocation and applicability of the provisions of the PP Act 1971 is not dependent upon the aspect of possession. What is material is the occupation of the premises which has become unauthorised occupation. The occupation is a continuous concept.

(xi) The propositions enunciated in Suhas H. Pophale, as noticed in paragraph 3.3.6 of this judgment, do not, in our considered view, state the correct position of law. The observations made therein, with great respect, are not in consonance with the settled legal principles and runs contrary to the principle of stare decisis and stand overruled to that extent.

20) Thus, it is no more *res-integra* that a person in unauthorized occupation of public premises under Section 2(e) of the PP Act cannot invoke protection of either Bombay Rent Act or Maharashtra Rent Control Act. Therefore, reliance by the Petitioner on the decree passed by the Small Causes Court, as modified by the District Court, rejecting all other grounds for eviction except Section 14(1)(hh) of the Bombay Act is clearly misplaced.

21) The District Court has also taken note of the fact that the Petitioner himself is no longer in occupation of the premises. Petitioner is not the original tenant and claims to have acquired tenancy rights along with goodwill and stock-in-trade from the original tenant. This is

a sort of indirect subletting which this court has dealt with in *Smt. Julia Rodrigues (since deceased by her heirs and legal representatives-1(A) Dr. Uma Pradeep Divate V/s Smt. Chandra Gulab Advani and Ors.*⁶ In that case, the tenant had purchased the tenancy rights alongwith goodwill and stock-in-trade in similar fashion for running of a laundry, whereas business of selling optical products was noticed in the suit premises by an altogether different entity. The present case involves similar circumstances though the issue is not about eviction of tenant either under Bombay rent Act or under Maharashtra Rent Control Act. In paragraph 13 of its judgment, the District Court has taken note of the fact that one Smt. Supriya Shreyas Kamble is found to be occupying the premises, who runs the business in the name of M/s Isha's Collection. As observed above, the original tenant was running the business of selling footwear whereas an altogether different business (possibly of ladies readymade garments) is found to be conducted in the premises that too by a distinct person Smt. Supriya Shreyas Kamble. In paragraph 13 of the Judgment, learned District Judge has held as under:

13. The appellant in para no. 5 of his appeal mentioned that the Estate Officer had issued a notice dated 12.06.2019 but it was served on Mr. P. D. Kamble who is in fact not at all concerned with suit premises as tenant. It is surprising to note that appellant himself produced shop Act license of his snack center obtained on 23.10.1993. Thus the business which the appellant was carrying in the suit premises was totally different than the business which Mr. Doiphode was carrying in it. Therefore, there is no meaning in saying that he had purchased tenancy right along with stock in trade and goodwill of business of Mr. Doiphode. It is further material to note that appellant himself produced zerox copy of shop act license of firm M/s Isha's collection issued in the name of Supriya Shreyas Kamble. He failed to explain what concern she has got with the suit premises. These facts and circumstances and documents clearly show that deed of assignment of tenancy right

⁶ Writ Petition No. 6679 of 2003 decided on 7 October 2024

got executed from original tenant Mr. Doiphode is merely an eye wash. Actually, Supriya Kamble is running business of Isha's collection in the suit premises. The appellant in his appeal nowhere explained in what capacity Supriya Kamble is running her business in that shop. Therefore there is no merit in the contention of appellant that tenancy rights of Mr. Doiphode in respect of suit premises was lawfully acquired by him.

22) Mr. Bhirange has sought to contend that the eviction has been ordered on the ground which is not reflected in the show cause notice and reliance is placed on judgment of Division Bench of Jammu and Kashmir High Court in *Dr. Yash Paul Gupta* (Supra). However, perusal of the eviction order would indicate that the same does not travel outside the grounds specified in the show cause notice. The Estate Officer has taken into consideration the factum of non-payment of rent and need of the Bank for additional space. Both the grounds were reflected in notice under Section 4 of the PP act. Therefore, it cannot be contended that eviction is ordered on the grounds not specified in the show cause notice.

23) Considering the overall conspectus of the case, I am of the view that no serious error can be traced in the order passed by the District Court dismissing the Appeal. It must also be noted that the Petitioner has invoked jurisdiction of this Court under Article 227 of the Constitution of India. The jurisdiction under Article 227 is supervisory and corrective in nature, in exercise of which, this Court need not correct every error of law or fact. So long as this Court is satisfied with the ultimate outcome of a case, power under Article 227 need not be exercised merely because any error of fact or law is demonstrated in the

order under challenge. The Apex Court in judgment of ***Garment Craft V/s. Prakash Chand Goel***⁷ has held in paragraph 15 as under:-

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

24) In the present case, this Court cannot turn a blind eye to the fact that the Petitioner has gained entry into the premises, which were never let out to him by the erstwhile landlord-Bank of Karad. He has secured possession under the guise of purchase of goodwill and stock-in-trade. No rent is paid in respect of the premises since 1972, i.e., for the last 54 long years. Petitioner/his legal heirs themselves do not run the originally purchased business of selling footwear. The things did not end here. Petitioners have further let out the premises to a third person-Smt. Supriya Suresh Kamble, who runs an altogether different business under the trade name- M/s Isha's Collection. The case thus involves unauthorised subletting twice. This conduct on behalf of

⁷ (2022) 4 SCC 181

Petitioner otherwise does not entitle him to any relief in exercise of jurisdiction under Article 227 of the Constitution of India. The owner of the premises must receive the possession thereof at some point of time and cannot haplessly watch the premises being freely passing hands from one person to another and from one business to another. This court is otherwise satisfied with the ultimate outcome of the proceedings before the District Judge, which has not committed any serious jurisdictional error while deciding the Appeal nor has recorded any perverse findings while upholding the Eviction Order. Therefore, order of the District Judge appears, to my mind, to be unexceptional and the Petition is devoid of any merits. The Petition therefore must fail.

25) Resultantly, Petition fails and is **dismissed** without any order as to costs.

[SANDEEP V. MARNE, J.]

26) After the judgment is pronounced, Mr. Bhirange, the learned counsel appearing for the Petitioner seeks stay to the judgment for a period of eight weeks. The request is opposed by Mr. Kadam, the learned counsel appearing for the Respondent. Considering the nature of findings recorded in the judgment, the request for stay to the judgment is rejected.

[SANDEEP V. MARNE, J.]