

**IN THE HIGH COURT OF BOMBAY AT GOA**

WRIT PETITION NO. 48 OF 2016

UNION OF INDIA, THROUGH ESTATE  
CO-ORDINATOR, INS GOMANTAK, REP.  
BY SHRI CAPTAIN PRADEEP BALI.

... Petitioner

Versus

SHRI PREMANAND H. DABHOLKAR.

... Respondent

Mr. Mahesh Amonkar, Advocate for the petitioner.

Mr. Michael A. Fernandes, Advocate for the respondent.

Coram:- C. V. BHADANG, J.

Date:- 27th June, 2016

P.C.

By this petition, the petitioner is challenging the judgment and order dated 21/10/2015 passed by the learned District Judge in Regular Civil Appeal No.168/2011, by which the order dated 20/09/2011, passed by the Estate Officer of the petitioner (original respondent) has been set aside and the matter is remanded back to the Estate Officer for deciding it afresh, in accordance with law.

2. The learned Counsel for the petitioner states that the respondent was represented by an Advocate Mr. M. Fernandes in the matter and as such, it cannot be said that there is any breach of principles of natural justice. The learned Counsel points out that the respondent was allowed to produce some documents at appellate stage, including Identity Card to show that the respondent belongs to a Fishermen

Community and has been staying in the disputed structure since long. He submits that the document about the handing over of the possession of the entire land (on which the disputed structure is standing) to Navy has also been supplied to the respondent and as such, the learned District Judge was not right in holding that there was any breach of principles of natural justice.

3. On the contrary, the learned Counsel for the respondent points out that on the date of hearing i.e. on 20/04/2009, the Presenting Officer and the respondent were present. Advocate of the respondent was not present on that date. He points out that the Estate Officer had put some questions to the Presenting Officer as also to the respondent, however, the respondent was not afforded any opportunity of cross-examination. He also submits that no summary of the evidence as such, is recorded by the Estate Officer.

4. I have considered the rival circumstances and the submissions made and I do not find that any case for interference is made out.

5. The learned District Judge has noticed in para 13 onwards that personal hearing was granted to the respondent on 05/05/2011 when the Presenting Officer and the S.D.O. were present before the Estate Officer, who questioned the Presenting Officer as to the ownership documents and whether ramp and the shed are still existing in the acquired defence land. He has further noticed that the respondent

was also questioned by the Estate Officer whether he has any document to show ownership, when the respondent had pointed out that the documents were already produced on 20/04/2009.

The learned District Judge has then noticed in para 15 that Section 4(b)(ii) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (the Act, for short) requires that such notice shall require all persons concerned to appear before Estate Officer on the date specified in the notice along with evidence which they intend to produce in support of their case and also for personal hearing, if such hearing is desired. What is significant is rule 5(2) of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971, which says that the Estate Officer shall record summary of such evidence and any relevant documents filed before him shall form part of the records and proceedings. It has been noticed that no such evidence was recorded and the impugned order only discloses that some questions were put by the Estate Officer to the Presenting Officer and the respondent. It is for these reasons that the learned District Judge has set aside the impugned order passed by the Estate Officer and has remanded the matter back. It can, thus, be seen that there are provisions which govern the procedure of enquiry, are evidently not followed. Thus, the finding recorded by the learned District Judge that these provisions are not followed does not require any interference. In any event, as the matter is remanded back, the petitioner will get an opportunity to establish its case before the

Estate Officer.

6. For these reasons, in my considered view, no case for interference is made out. In the result, the Writ Petition is hereby dismissed, with no order as to costs.

C. V. BHADANG, J.

SMA