

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12865 OF 2015**

Mr. Ibrar Hassan Shah

Petitioner

Vs

The Union of India, acting
through the Western Railway
Admn. Section (Works)

.. Respondent

Mr. Sushil Upadhyay h/f Ashok Saraogi, Advocate for Petitioner.
Mr. Chetan Agarwal, Advocate for Respondent.

CORAM : R.G.KETKAR,J.
DATE : 03/05/2016

PC:

1. Heard Mr. Sushil Upadhyay, learned counsel for the petitioner and Mr. Chetan Agarwal, learned counsel for the respondent at length. Leave to amend the prayer clause is granted.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 22.12.2011 passed by Estate Officer & Divisional Engineer (Estate/South) Western Railway, Mumbai Central, in Suit No.PPE/07/2010 as also order dated 9.1.2012 passed by the learned Principal Judge of the City Civil Court in Appeal No. 4 of 2012. By order dated 22.12.2011, the Estate Officer, in exercise of powers conferred on him under section 5A (2) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, 'Act') ordered the petitioner herein to vacate the suit land and remove the structures re-erected upon the premises by him

within 12 days from the date of publication of the order. In the event of refusal or failure to comply within a period specified, the structures shall be demolished by the Estate Officer or officer authorized by him and the expenses for such demolition shall be recoverable from the petitioner herein. Aggrieved by that order, the petitioner preferred Appeal under section 9A of the Act before the Appellate Authority. By the order dated 9.1.2012, stay application as also Appeal was dismissed on the ground that the order of the Estate Officer was under section 5A of the Act is not appealable.

3. In support of this petition, Mr. Upadhayay submitted that Divisional Manager (Works), Bombay Central, issued allotment letter dated 15.12.1992. As per the application made by the petitioner dated 18.6.1992, Railway allotted temporarily the area admeasuring 10'x12' for carrying on business of Iron Laundry for economic help to his poor family. Mr. Upadhayay submitted that the petitioner was initially working as a Gangman and is presently working as Valveman. He falls in 'D' Group and in view of his low income, the petitioner was allotted area admeasuring 10'x12' for carrying on business of iron laundry. On 27.6.2005, the petitioner received letter from Senior Divisional Engineer (Estate) stating that permission to allot Iron Pass Table licence in Railway Colony Building cannot be granted. On 16.12. 2005 the petitioner requested the Division Railway Manager (Wester

Railway) to reconsider the said decision and grant permission and allot Iron Press Table licence on humanitarian ground. However, till date, that request was not conceded. He submitted that the proceedings under the Act for evicting the petitioner was initiated. The petitioner had already submitted original allotment letter dated 15.12.1992 in the year 2011. Along with the affidavit in reply, he annexed photocopy of the letter dated 15.12.1992. He submitted that by order dated 22.12.2011 the Estate Officer ordered the petitioner to vacate the suit land and remove the structure re-erected within 12 weeks. He submitted that as the petitioner was allotted the area admeasuring 10'x12' for carrying on business of iron laundry, it cannot be said that he is unauthorized occupant. The authorities were, therefore, not justified in initiating proceedings under the Act. Aggrieved by this order, the petitioner preferred Misc. Appeal before the City Civil Court which was dismissed on the ground of maintainability. He, therefore, submitted that the petition requires consideration.

4. On the other hand, Mr Agarwal supported the impugned order. He submitted that in the year 2006 the structure erected by the petitioner was demolished. The petitioner erected the structure again. The Estate Officer, therefore, directed the petitioner to remove the structure re-erected and also ordered eviction of the petitioners from the premises, as more particularly described in Schedule of that order. He submitted that the Estate

Officer held that the allotment letter dated 15.12.1992 is fabricated document.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. Perusal of the order of the Estate Officer shows that the Estate Officer recorded a categorical finding that the allotment letter dated 15.12.1992 is false and fabricated document. Apart from that, the petitioner has not paid any licence fee. As far as the submission of Mr. Upadhyay that in the year 2011 the petitioner had submitted original allotment letter dated 15.12.1992 is concerned, perusal of the material on record does not indicate that the said contention was raised in the written statement or that any material is produced in support of the contention that the original allotment letter was submitted to the authorities. In other words, for the first time the said contention is advanced. In view thereof, it is not possible to accept the submission of Mr. Upadhyay that the finding recorded by the Estate Officer about authenticity of allotment letter dated 15.12.1992 is erroneous. As the Estate Officer has recorded a categorical finding that the allotment letter is false and fabricated document, no case is made out for invocation of powers under Article 227 of the Constitution of India.

6. Mr. Upadhyay, upon taking instructions from the petitioner who is present in the court, states that within four weeks from

today, the petitioner will remove the structure as ordered by the Estate Officer and further will not carry out any construction. Statement made on instructions is recorded.

7. It is made clear that in case the petitioner does not remove the structures as ordered by the Estate Officer, the respondents will be at liberty to demolish the same and recover the costs from the petitioner as also may consider initiating departmental proceedings against the petitioner for violation of service conditions, if so advised. Petition fails and the same is dismissed. Order accordingly.

(R.G.KETKAR, J.)