

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.555 of 2015**

Mr. Deepak Shah, son of Shri
N. Shah, major of age, Indian
National, businessman, resident
of 307-N, Airport Road, behind
Sea Scan Maritime Academy,
Chicalim-Goa-403 711. .. Petitioner

Vs.

1. Estate Officer-cum-Commanding
Officer, Office of the Estate
Officer, INS Gomantak,
Vasco-da-Gama-Goa- 403 802
2. Estate Co-ordinator, INS Gomantak
Vasco-da-Gama-Goa-403 802 .. Respondents.

Mr. Rohit Bras Des Sa, Advocate for the petitioner.

Mr. M. Amonkar, Central Government Standing Counsel for the
respondents.

CORAM :- C. V. BHADANG, J.

DATE:- 1st March, 2017

ORAL JUDGMENT :

On 12/02/2016, a notice for final disposal was issued in
this case. Accordingly, the petition is being finally disposed of by
consent of the parties.

2. On 30/09/2009, the first respondent Estate Officer-cum-
Commanding Officer, INS Gomantak, Vasco-da-Gama, Goa, had

issued a notice to the petitioner, claiming that the petitioner has unauthorisedly occupied an old temporary MES Store Building in the defence land and has sublet the same to his workers and their families. The petitioner was directed to vacate the illegally occupied defence land within 15 days, failing which Eviction Proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (the Act, for short), were to be initiated against him. On 06/04/2012, the first respondent issued a show cause notice under Section 4(2)(b)(ii) of the Act to the petitioner, informing that the land lying between the railway track and the Indian Navy's Auditorium 'Rajhans', bearing Survey No.83/1 of Chicalim village, Vasco-da-Gama, is a part of the acquired defence land, belonging to Ministry of defence. The petitioner was further informed that he has unlawfully occupied an old temporary MES Store Building in the defence land and he has sublet it to his workers and their families. The structure, which is said to be illegally occupied, is described as under :

“SCHEDULE

- | | |
|---------------------------------|--|
| (a) <i>Type of Construction</i> | - <i>Tin shed and modification of old MES store.</i> |
| (b) <i>Area</i> | - <i>80 Sqyd x 20 Sqyd</i> |
| (c) <i>Location</i> | - <i>Along the Indian Navy's Auditorium “RAJHANS” south of MES Pump station.</i> |
| (d) <i>Bounded by</i> | |
| <i>To the North</i> | - <i>Indian Navy's auditorium</i>
- <i>“RAJHANS” compound wall.</i> |
| <i>To the East/South-</i> | <i>Open defence land/passage from</i>
<i>- NH-17, along the railway track,</i>
<i>leading to Defence and West of</i>
<i>NOFRA II.</i> |

To the West - Defence Land."

3. The petitioner filed his reply on 29/04/2011. It was contended that the petitioner had sent reply to the earlier notice dated 30/09/2009 and, thereafter, no action was taken as the reply was found to be satisfactory and, therefore, it was not thought fit to pursue with the matter. It was contended that the land, which has been acquired for the defence purpose more than 30 years back, is bounded on all sides by a permanent compound wall and the portion, which is in possession of the petitioner, is situated beyond the compound wall. It is in his possession since last more than 30 years. It was claimed that the petitioner has constructed permanent structures on the land more than 30 years back. In short, according to the petitioner, he was the owner in peaceful possession and enjoyment of the structure, which falls outside the existing compound wall of the land, which has been acquired for the defence purpose.

4. It appears that the Estate Officer conducted a hearing on 13/04/2011, 29/04/2011 and 31/05/2011, in which the petitioner was present. On 28/02/2012, the first respondent, in exercise of the powers under Section 5(2) of the Act, called upon the petitioner to vacate his occupancy as set out above, within 15 days.

5. Feeling aggrieved, the petitioner challenged the same before the learned District Judge at Margao in Regular Civil Appeal No.62/2013. The learned District Judge, by the impugned judgment and order dated 26/03/2015, has dismissed the appeal. Hence, this petition.

6. I have heard Shri De Sa, the learned Counsel for the petitioner and Shri Amonkar, the learned Central Government Standing Counsel for the respondents. With the assistance of the learned Counsel for the parties, I have gone through the relevant record and perused the impugned orders passed.

7. Shri De Sa, the learned Counsel for the petitioner has referred to the record of the personal hearing conducted on 13/04/2011 and subsequent hearings, in order to submit that the Estate Officer has adopted a procedure, which cannot be accepted or approved. It is submitted that the Estate Officer put certain questions to the Presenting Officer appearing on behalf of the establishment and thereafter, to the present petitioner/ noticee. It is strenuously urged that no opportunity to produce documents or to cross-examine the witness on behalf of the establishment, was granted and consequently, there is gross failure of principles of natural justice. Reliance, in this regard, is placed on the decision of the Supreme Court in the case of ***New India Assurance Company Ltd Vs. Nusli Neville Wadia and another***; [AIR 2008

SC 876] and in particular, para 45 thereof, in order to submit that in an enquiry of the present nature, an opportunity to cross-examine the witness has to be granted as being part of the principles of natural justice. Reliance is also placed on the record of proceedings in ***Madhaorao Sindia (dead) by LRs Vs. Ramesh Jatav and others***; [(2006)1 SCC 379]. It is submitted that the petitioner has produced 8 affidavits during the pendency of this petition, which would clearly go to show that the petitioner has been in possession of the building since more than 30 years. It is submitted that the matter, therefore, needs to be remanded back to the Estate Officer, for affording an opportunity to the petitioner in consonance with the principles of natural justice.

8. On the contrary, it is submitted by Shri Amonkar, the learned Central Government Standing Counsel for the respondents that it has all along been the case of the petitioner that he is in possession of certain documents, establishing the claim of ownership over the subject structure and the land underneath, which the petitioner has failed to produce till today. It is submitted that as per the revenue record, the land Survey No.83/1 of Chicalim village, Vasco-da-Gama, which is a part of the acquired defence land belonging to Ministry of Defence, has been recorded as such in the revenue record. It is submitted that the petitioner, having been afforded an opportunity of personal hearing more than once and he having failed to produce any document to

substantiate his claim, cannot now complain about the breach of principles of natural justice. It is submitted that the claim of the present nature cannot be established on the basis of oral evidence in the form of affidavits, which too, are produced during the pendency of this petition for the first time. It is submitted that the decision in the case of **Nusli Wadia** and **Ramesh Jatav** (supra), are distinguishable on facts.

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

10. It is a matter of record that the petitioner was issued with a show cause notice, to which the petitioner filed a reply on 29/04/2011, claiming that he is in possession of the subject structure/ land since more than 30 years. The Estate Officer had heard the matter on various occasions, namely 13/04/2011, 29/4/2011 and 31/05/2011, on which dates, the petitioner was personally present. During the course of hearing on 13/04/2011, the petitioner claimed that he has relevant documents about the structure and stated that he will submit all the relevant documents of the structure (in response to question No.7.) The petitioner claimed that the persons residing there, are his employees since more than 30 years. On 29/04/2011, the petitioner informed the Estate Officer that he is not prepared to give the documents to the

Estate Officer as according to the petitioner, the Estate Officer was not the competent authority. He also stated that he has not brought the papers. The record and proceedings dated 31/05/2011 shows that a copy of Form No.I and XIV pertaining to Survey No.83/1, was furnished to the petitioner, showing only one occupant in the entire survey number as Government of India, Ministry of Defence and the revenue record did not show any other occupant in the said survey number. At this stage, the petitioner stated that the ownership documents are lying with Margao Municipal Council. Lastly, he sought four weeks' time to submit all the papers on the ground that the said papers are lying with "other partner". The petitioner did not produce any documents either before the Estate Officer or before the learned District Judge, or before this Court.

11. During the pendency of this petition, on 30/08/2016, it was submitted on behalf of the petitioner that the petitioner has several documents to establish his claim in respect of land Survey No.83/1, which were not allowed to be produced by the Estate Officer and, therefore, time was sought to produce the documents, in order to demonstrate that an enquiry was necessary to be made into these documents. In view of the specific submission on behalf of the petitioner, time was granted. This is again recorded in the order dated 20/12/2016. Thereafter also, time was sought and was granted on 2 or 3 occasions. The petitioner did not produce any

documents, but produced affidavits of some 8 persons (marked 'X' for identification) on 08/02/2017, to which I will deal with a little later. Thus, the fact remains that although the petitioner was all along claiming that he is having documents to substantiate his claim as to the ownership of the land and the subject structure, the petitioner has been unable to produce the same. It may not be out of place to mention that today, the learned Counsel for the petitioner, in all fairness, stated that the petitioner is not having any such documents. Thus, the contention that the Estate Officer failed to grant opportunity to produce documents, to my mind, cannot be accepted.

12. Coming to the affidavits filed, all these affidavits are of the persons, who are claiming to be the employees/ lessees of the petitioner in respect of the building, which is styled as 'Chandan Construction building', situated at New Vadem, Vasco-da-Gama. The Affiants are employed either as mason, carpenter, generator mechanic, supervisor, plumber and 'servant' with the petitioner and are also claiming to be the lessees of the petitioner in respect of the said premises. When the petitioner was all along claiming to be in possession of the documents to establish his ownership, the production of the affidavits is of no consequence. On the contrary, the affidavits support the claim made in the show cause notice that the structure has been sublet by the petitioner which he had denied during the course of the enquiry, claiming that the

persons residing therein, are his employees. The affiants claim that they are employees of the petitioner and also lessees. The claim of ownership to immovable property and structures standing thereon, can be substantiated on the basis of documentary evidence and not oral evidence in the form of affidavits except where a claim of adverse possession is set up, which is not the case in the present petition.

13. I would now briefly consider the submissions based on the record of proceedings made by the Estate Officer. I have carefully gone through the record of proceedings drawn on all the dates of hearing. The Estate Officer had put certain questions to the Presenting Officer representing the establishment and then to the petitioner and recorded the question and answers. It cannot be accepted that the Presenting Officer was a witness on behalf of the establishment. The Presenting Officer represented the establishment before the Estate Officer. All that the Estate Officer has done is to record the particulars of hearing in a question and answer form. It cannot be considered as evidence led by the establishment so as to afford an opportunity of cross-examination. The entire issue turns upon the existence and production of documentary evidence in the wake of the fact that Form No.I and XIV in respect of entire survey No.83/1 stands in the name of Government of India, Ministry of Defence. In my considered view, the contention raised on the basis of the record of proceedings by

the Estate Officer, cannot be accepted.

14. In the case of **Nusli Wadia** (supra), the question was, who should begin to lead evidence in a proceeding under the Act. The appellant Company was the owner of a building in which the respondents (in one of the appeals) were tenants in respect of two apartments. Respondent no.1 in the other appeal, was a licensee in respect of a furnished flat in the said building. The tenancy and the licence were terminated and on failure to vacate by the tenant/ licensee, proceedings under the Act were initiated as the appellant was a 'State', within the meaning of Article 12 of Constitution of India. On an application filed by the appellant, the Estate Officer directed the first respondent to lead evidence and matter was adjourned for cross-examination of the first respondent's witnesses by the Advocate for the appellant. The first respondent claimed that it is the appellant, who should lead evidence first. It can, thus, be seen that the question in the said case was as to which party should lead evidence first. It is, in the context of these facts, observed in para 45 that if some facts are proved by the landlord by leading evidence, indisputably, the occupants should get an opportunity to cross-examine the witness.

15. It is now well settled that the principles of natural justice cannot be cast in a strait-jacket formula. The question depends upon the facts and circumstances of each case. The record does

not show that at any stage of the proceedings, an opportunity to lead oral evidence or to direct any of the persons from the establishment to remain present for being cross-examined, was sought before the Estate Officer. Thus, the submission based on breach of principles of natural justice, to my mind, cannot be accepted. The learned District Judge has also noticed that the appellant has failed to produce any document, in order to show that land bearing Survey No.83/1 of Chicalim village belongs to him or is in his rightful possession. The learned District Judge has further noted that the petitioner did not take any steps to get his name recorded in the occupant's column of survey no.83/1, although survey was done way back in the year 1977 when the claim of the petitioner is that he is in possession of the land/structure since 1969. I have carefully gone through the order passed by the Estate Officer and the judgment of the learned District Judge and I do not find that they suffer from any infirmity, so as to warrant interference in the exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The petition is without any merit and is, accordingly, dismissed, with no order as to costs.

C. V. BHADANG, J.

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