

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 363 OF 2017
WITH
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WRIT PETITION NO. 379 OF 2017
WITH
WRIT PETITION NO. 380 OF 2017**

Shri Namdeo Shankar Malik

..Petitioner.

Vs

The Union of India, through
Estate Manager, CPWD..

.. Respondent

Mr. Subhash P. Nalavade, Advocate for Petitioner.

Mr.S.R.Rajguru and Ms.Purnima Awasthi, Advocate for
Respondent, in all petitions.

**CORAM : R.G.KETKAR,J.
DATE : 10/02/2017**

PC:

1. Heard Mr.Subhash Nalavade, learned counsel for the petitioner and Mr.S.R.Rajguru, learned counsel for the respondent in all Petitions at length.

2. By these Petitions under Article 227 of the Constitution of India, the petitioner in each of the petitions has challenged the Judgments and orders dated 17.5.2016 passed by Estate Officer, Government of India, Central Public Works Department (CPWD) as also Judgments and orders 25.10.2016 passed by the Principal Judge, Greater Bombay (for short, "Appellate Authority") in Misc. Appeals. By these orders, the authorities below have held that

the act of constructing/renovation/repair of hut structure for verandah Courtyard attached to Temple front near Building No.17, Sector-III, C.G.S. Colony, Kane Nagar, Antop Hill, Mumbai-400037 and running various other allied activities near Building No.17, Sector-III, CTS No.88, C.G.S. Colony, Kane Nagar, Mumbai, is a total encroachment, as per Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short, 'Act') by the young boys, Sports Club/ Sai Baba Mandir Trust. In exercise of powers under sub-section (A) and Section 5 of the Act, the petitioner, being Secretary, Young Boys Sports Club/Sai Baba Mandir Trust and all its Members/Trustees or any person who may in occupation of the said premises in part or thereto, are directed to vacate from the said premises within 15 days of publication of the order. Since common questions of law and facts arise in these petitions, facts from Writ Petition No. 379 of 2017 are taken into consideration.

3. In support of these petitions, Mr.Nalavade submitted that basically the notices issued by the Estate Officer and the proceedings initiated under the provisions of the Act are wholly misconceived for want of proper identification of the alleged encroachment. He submitted that in respect of island city only C.S. numbers are given. In respect of suburbs CTS numbers are given. He has invited my attention to the notice dated 3.12.2013 issued by the Estate Officer. In that notice, Estate Officer

observed that Union of India is the undisputed owner of the land bearing CTS No. 88 as per record of Property Card, whereas the C.G.S. Colony is situate. However, name of village was not mentioned in the notice. He submitted that the proceedings are initiated based on false statement made in the proceedings. No quarter was allotted to the petitioner. He has also invited my attention to Lay out Plan at page 240 in respect of Sectors I to VI. He submitted that there are several unauthorized constructions in C.G.S. Colony and only the petitioner is singled out and action under the provisions of the Act is initiated. He has taken me through the written arguments submitted by the petitioner wherein it is specifically contended that notices issued by the Estate Officer are bad in law as the notices do not disclose name of village of CTS No.88. It is, therefore, necessary to clarify that the CTS number is of which village. He further submitted that though the property belongs to the Union of India, it belongs to Salt Department. They have separate establishment and Salt Commissioner has appointed different Estate Officers. In other words, notices and proceedings initiated by the Estate Officer of CPWD are without any authority of law. He, therefore, submitted that the impugned orders deserve to be set aside, thereby, dismissing the proceedings initiated under the provisions of the Act.

4. On the other hand, Mr. Rajguru supported the impugned

orders. He submitted that the petitioner does not dispute that the land belongs to Union of India. The authorities below have considered the submission that the land belongs to Salt Department and it was observed that the land is transferred in favour of CPWD. He submitted that the authorities below have concurrently found that without any authority, the petitioner has carried out unauthorized construction and accordingly impugned orders are passed. He, therefore, submitted that no case is made out for invocation of powers under Article 227 of the Constitution of India.

5. I have considered the rival submissions advanced by the learned counsel appearing for the parties. I have also perused the material on record. All the submission which have been reiterated here, were also advanced before the authorities below.

6. In so far as the Estate Officer is concerned, in paragraph 29, the Estate Officer referred to CTS Extract which shows that the property is in the name of Government of India. The Estate Officer also considered the Extract of Property Register Card as also Plan sanctioned by the Municipal Corporation for C.G.S. Colony. The Estate Officer, after considering the material on record as also the case of the petitioner, came to the conclusion that the property belongs to Government of India and came to the conclusion that the petitioner, being Secretary, Young Boys Sports Club/Sai Baba Mandir Trust and all its Members/Trustees or

any person who may in occupation of the said premises in part or thereto, have no authority to construct/repair structures/run various activities upon the Government property. The Estate Officer has also mentioned various representations made by the petitioner to various authorities and passed order of eviction against the petitioner.

7. As far as the Appellate Authority is concerned, in paragraph 7, the Appellate Authority referred to Property Card of CTS No. 88 which clearly shows that the said land initially vested in the Central Government and the officer in-charge was the Dy. Salt Commissioner, Mumbai. It was later on transferred from Salt Department to CPWD free of cost. The Appellate Authority , therefore, recorded the finding that CTS no.88 vests with the respondent. In paragraph 8, the Appellate Authority has recorded a categorical finding that not a single document is placed on record by the petitioner to show its source of authority for possessing and erecting the unauthorized structures. The Appellate Authority referred to correspondence made by petitioner to different high Authorities with the help of local politicians to get the land allotted and structures regularized. However, nothing was placed on record as regards authorization of the structures.

8. After considering the material on record as also after going through the impugned orders, I do not find that the authorities

below have committed any error in passing the impugned orders. The petitioner was not in a position to demonstrate any authority under which he is occupying the premises or that the structures were erected by following due procedure of law. The petitioner was not in a position to demonstrate that the findings recorded by the authorities below are perverse being based on no evidence or that they are contrary to material on record. Hence, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petitions fail and the same are dismissed.

(R.G.KETKAR, J.)