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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.422 OF 2019

Bharat Balgovind Paswan ... Petitioner

V/s.

The Union of India ... Respondent

- Ms. Aarti Kulkarni a/w Mr. Nilesh Parab i/by Sachin Masurkar, for the Petitioner.
- Mr. Chetan Agrawal a/w Shrishety Punjabi, Pravin Mengane, for respondents.

CORAM : G. S. KULKARNI, J.

DATE : 1st MARCH, 2019.

P.C. :

1] Heard Ms. Aarti Kulkarni, advocate for the petitioner and Mr. Chetan Agrawal, advocate for respondent.

2] By this petition filed under Article 226 of the Constitution of India, the petitioner challenges an order dated 10th December, 2018, passed by the “Estate Officer/Divisional Engineer (Estate/South), Western Railway” under Section 5A(2) of the Public Premises (Eviction of Unauthorized Occupant) Act 1971, (for short “the Act”), whereby the petitioner has been

called upon to vacate his structure unauthorizedly constructed on the railway land within 15 days of the publication of the order, failing which the petitioner would be forcibly evicted as per procedure. The case of the petitioner is that notice dated 12.12.2017 came to be issued to the petitioner under Section 5-A(2) of the Act, calling upon the petitioner to show cause as to why the action of eviction be not initiated against the petitioner for unauthorized occupation and construction on the land belonging to respondent railway. In the reply to show cause dated 24th April 2018, the petitioner inter alia contended that the petitioner is in possession of Ration Card, Electricity bill Pan Card, Adhar Card etc., to show that he is in occupation of the said structure for many years. It was further contended that the State Government is in the process of declaring the said area as “slum area” and therefore, the petitioner is entitled to continue in occupation and possession of the structure. After hearing the petitioner the Estate Officer passed detailed order dated 10th December, 2018 as impugned, directing, eviction of the petitioner. The impugned order passed by the Estate Officer does not find any favour to the contentions as raised on behalf of petitioner in reply to show cause notice. While dealing with this contention as raised on behalf of petitioner, the Estate Officer has categorically observed that not a single document was placed on record by the petitioner indicating any permission of the railway authorities to occupy

the said land. The relevant observations are required to be noted which reads thus :-

3] In respect of the issue No.03. The Respondents were given ample opportunity to prove their respective occupation over the suit land owned by the Railways, but the Respondents herein except, Ration Card, Voter I.D. Pan card, Aadhar Card, Electricity bill failed to place on record any documentary proof either in the form of the title Deed of the said land or written authorization from Western Railway to occupy the said land, on the other hand, the Railway Administration placed on record map and sketch of the said land along with documents proving the Railway's over the subject land. It is necessary to mention here that a Public Premises or land belongs to Railways can only be occupied under written authorization from the competent authority which is not the case here and as such this court holds the Respondent as unauthorized occupant of Railway land and therefore liable to be evicted from the Railway land. The respondent has erected the structure on Railway Land without any authority and therefore, the respondent is unauthorized occupant. The Court upon raising a query to the respondent about nature of structure erected by them, it was replied that the same is a hard in nature but not a single documents has been placed on record showing a permission of the planning authority for the construction of the said structure or any sanctioned plans to that effect, in view of the same, this Court comes to a conclusion that the Respondent is not only unauthorized occupant but have carried out unauthorized construction over the Railway land or so.

4] In respect of issue No.04, the respondent expressed their

willingness to vacate the Railway land provided Railway administration or State Government and under the MUTP R & R policy 2000 shall provide them alternate accommodation. This Court upon careful consideration of various policies framed by Railway Board come to their conclusion that there is no such policy of Rehabilitation or providing alternate accommodation to the unauthorized occupant of the Railway land. The State Government may be having the said policy to provide alternate accommodation to the unauthorized occupation of the State Government land and or to encroacher of the state land but the said policy is not applicable to the Railway. In view of the absence of any policy of Railways to provide any alternate accommodation the ;said ground raised by the respondent cannot survive and stands rejected”.

3] Learned counsel for the petitioner while assailing the impugned order would submit that the documents like Ration Card, Pan Card Adhar Card show that the petitioner was occupying and in possession of his structure on the railway land for substantial period of time and therefore, the petitioner is entitled for a protection and no eviction action be taken against the petitioner. It is submitted that if the petitioner is granted permanent alternate accommodation, petitioner is ready to vacate the premises. Learned counsel for the petitioner, however, fairly states that there is no slum scheme as notified on the railway land in question and that there is no other scheme so that the petitioner can establish his claim for permanent alternate accommodation.

4] On the other hand Mr. Agarwal, learned counsel for the respondent in opposing the petition, would submit that the petitioner is a trespasser on the railway land and has no any right to stay on the railway property. It is further submitted that the competent authority has taken into consideration all the documents as placed on record and has rendered a finding that the petitioner does not have any legal right to construct a structure on the railway land. Mr. Agarwal, learned counsel for the petitioner has placed reliance on the decision of Division Bench of this Court in W.P. (L) No.3254 of 2016 dated 23rd January, 2017; wherein in several cases the petitioners therein had encroached on the railway land, writ petition came to be rejected.

5] Having heard learned counsel for both the parties and a perusal of the record, I am of the opinion that the petitioner appears to be rank trespasser on the railway land. There is no material/document to show that the petitioner at any point of time was authorized by the respondent-Railways to occupy the said land. The documents on record would, in no manner, indicate the title of the petitioner to the land in question or any lawful authority to occupy the railway land. The perusal of the impugned order clearly indicates that all the issues as urged on behalf of the petitioner

are considered and elaborately discussed by the Estate Officer, who has rightly come to the conclusion that the petitioner would not have any legal right to occupy the land.

6] As regards the contention raised on behalf of the petitioner that the slum scheme is proposed on the railway land. Mr. Agarwal, learned counsel for respondent has opposed this contention. It is submitted that there is no such scheme as declared in respect of the railway land. It is submitted that this contention is urged on behalf of petitioner only as contention to avoid/eviction action as initiated against the petitioner. It is submitted that the land is immediately required for public purpose i.e. for expansion of railway station and platform facilities.

7] As far as encroachment on the railway land is concerned, Mr. Agarwal would be justified in placing reliance on the decision of Decision Bench of this Court, in Writ Petition No.3254 of 2016; wherein it has been categorically observed that in the absence of any permission to erect the structure on the railway land, occupation of such persons is illegal, such persons entry is by back door method of trying to perpetuate a patently illegal occupation of premises. The observations of the Division bench in paragraph 20 of Writ Petition No.3254 of 2016 are required to be

reproduced as follows:

“20. It is thereafter this writ petition was moved. We are, therefore of the clear opinion that this is an abuse of the process of this Court. The jurisdiction under Article 226 of the Constitution of India is not available to such encroachers and law breakers, who with impunity enter upon public properties and without any right or a semblance of any permission proceed to erect and construct structures thereon. These structures may be existing for decades together, but the very act of encroaching upon railway property being a punishable offence as also the powers conferred to evict the encroachers in law being constitutionally valid, then we cannot overlook all such legal orders and defeat and frustrate their implementation and enforcement by entertaining a writ petition. This is a back door method of trying to perpetuate a patently illegal occupation of public premises. To our mind to such properties and which are public premises, the Slum Act can have no application. The Slum Act makes better provision for the enforcement and clearance of slum areas in the State and their redevelopment. In the present case, the properties are not declared as slum areas. The Act itself applies to such properties which by their very nature can be termed as slums. Chapter I-A enables a Slum Rehabilitation Scheme to be made and enforced. Chapter I-B therefore, enacts provisions so as to take care of the rights of those who can be said to be protected occupiers, their relocation and rehabilitation. We do not see how the Act can be invoked and by applying the logic that the subject structures are slums. There is no question, therefore, of any protection and in the facts and circumstances of this case, being granted by permitted invocation of the Slum Act. We are of the firm opinion that this law cannot be invoked and to defeat a lawful and valid action.”

8] In light of above discussion, I am of the opinion that no case is made out for interference in this petition. It is accordingly dismissed. No costs.

[G. S. KULKARNI, J]