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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3048 OF 2019

WITH

CHAMBER SUMMONS NO.277 OF 2018

Sameer Usman Shaikh And 3 Ors.

...Petitioners

vs

Union of India Through Government
Pleader And 5 Ors.

...Respondents

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Ms. Gayatri Nayak, a/w. Ms. Manisha Mundhe, i/b. Mr. Rajesh
Khobragade, for the Petitioners.

Mr. Chetan Agrawal, a/w. Ms. Jyoti S. Agrawal, for Respondent Nos. 2
to 4.

Mr. H.S. Ansari, for the Applicant to the Chamber Summons.

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CORAM : S.C. GUPTE, J.

DATED: 06 FEBRUARY, 2020

P.C.:

. Heard learned Counsel for the parties.

2. This writ petition challenges a notice issued under the Public Premises (Eviction of Unauthorised Occupants) Act ("Act") and an order of eviction passed by the competent authority on the basis of such notice. The case of Union of India as well as Western Railways, who are Respondents in the present petition, is that the subject land belongs to the railways and was illegally encroached upon by the Petitioners. The Petitioners claimed to have registered themselves under the name of

Bandra Navpada Rahiwashi Co-operative Housing Society Ltd. They claim to be in possession of the land under an indenture of lease with MHADA. It appears that there is a development agreement in respect of the land. The land, however, with which we are concerned in the petition, does not form part of the leasehold land but outside it. The Petitioners resisted the eviction notice of the competent authority and the proceedings under the Act purportedly on the basis that they had certificates and other documents under the Shops and Establishment Act as well as electricity connections and other requisite licences, ration card, etc. to show their legal possession of the disputed land.

3. So far as the railway's case for eviction is concerned, the authority had to decide, firstly, whether the land belonged to the railways and, secondly, whether the Petitioners had any authority from the railways, as such owners, to occupy the land. The authority particularly found that the demarcation maps and property card clearly showed the boundaries and the distance of the suit lands from the society's land. The authority considered the communication of Brihanmumbai Mahanagarpalika (letter dated 6 December 2019), under which the Corporation had confirmed that the land, on which illegal encroachments of galas were found, and which were the subject matter of the eviction proceedings, did not belong to the Corporation but belonged to Western Railways. So also, there was a letter on record issued by Deputy Collector, Bandra East, Mumbai (letter dated 16 October 2017) confirming that the land, illegally encroached upon, did not belong to the Collector but to Western Railways. There was nothing on record to justify any authority in the Petitioners to occupy the subject

land. The subject land was neither claimed by the Petitioners as of their ownership or under any other tenure. The documents produced by the Petitioners did not support their case concerning their authority to occupy the subject land. The authority found that in accordance with the provisions of the Act, the occupants had failed to discharge their burden to show that they had authority to occupy the subject land. After carefully going through the records, the authority was of the view that there was a case for eviction of the Petitioners from the subject land and, accordingly, ordered removal of the encroachments.

4. No fault can be found with the impugned order of the authority passed under sub-section (2) of Section 5A of the Act. The authority has considered all relevant and germane circumstances and materials and has not considered any irrelevant or non-germane material or circumstance for arriving at the conclusion. The conclusion of the authority is in keeping with the law and supported by some evidence. The documentary evidence of demarcation maps, property register card as well as written confirmations of Brihanmumbai Mahanagarpalika and Deputy Collector, Bandra East, Mumbai, support the ownership claim of Western Railway. As against it, there is no material to support the Petitioners' case either that the land is owned by the Municipal Corporation or that they have authority to occupy the land. The impugned order cannot thus be termed as either perverse or unreasonable.

5. There is, accordingly, no merit in the petition. The petition is dismissed.

6. At the request of learned Counsel for the Petitioners, the status quo operating in the matter during the pendency of the petition so far, shall continue to operate for a further period of four weeks.

7. In view of the disposal of the petition, the chamber summons does not survive and is disposed of.

(S.C. GUPTE, J.)

Smita
Gonsalves

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