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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7756 OF 2021**

HARISH DOSABHAI THACKER

.... Petitioner
(Ori. Appellant)

V/s

UNION OF INDIA AND OTHERS

.... Respondents.

Mr. Satyam N. Vaishnav a/w Ms. Nupur J. Mukherjee i/b M/s. N.N. Vaishnawa and Co. for the Petitioner.

Mr. Pranil Sonawane a/w Varsha Gangawale a/w Azar Ansan for the Respondent/Union of India.

CORAM: NITIN W. SAMBRE, J.

DATE: APRIL 19, 2022

P.C.:-

1] This Petition is by aggrieved allottee who was permitted to operate shops by the Respondents and against whom order of eviction came to be passed under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (For short "the said Act, 1971) which was confirmed in Appeal.

2] Brief facts for deciding present Petition are as under:-

3] Petitioner was permitted to run General & Grocery Store at Shop Nos. 9 and 10 at NOFRA Market, NOFRA, Colaba, Mumbai – 400005. Petitioner was operating from the said Shops since 18th October, 1981 till he was evicted on 18th November, 2021. Period of lawful occupation of the Petitioner has come to an end on 31st March, 2021. Based on existing policy of the Defence Department, so also the fact that period for which Petitioner was permitted to occupy and operate from the said premises was also over, show cause notice dated 31/5/2021 was issued to the Petitioner pursuant to the provisions of Section 4 of the said Act, 1971. The said notice is based on guidelines published by Ministry of Defence referred in communication dated 6th February, 2019 which provide for 100% reservation for War widows / Widows of those Defence personnel killed while on duty / disabled soldiers / Ex-servicemen and spouses /widows of Ex-servicemen.

4] Petitioner objected to the said show cause notice. Petitioner sought extension for a period of five years. However, Petitioner was granted extension upto 30th May, 2021. Estate Officer, as such,

proceeded to evaluate claim of the Petitioner and passed an order of eviction on 9th June, 2021. The said order was a subject matter of appeal under Section 9 of the said Act, 1971. In the said Appeal, matter came to be remanded on 11th August, 2021 to the Estate Officer with direction to the present Petitioner to file affidavit of witnesses which they intend to rely and keep them present for cross-examination. The operative part of the Appellate Court's order dated 11th August, 2021 reads as under:-

“O R D E R

1. Appeal No.24 is partly allowed.
2. Matter is remanded back to the Estate Officer.
3. Appellant is permitted to file affidavit of witnesses which he intends to rely and keep them present for cross-examination within a period of two weeks from today, failing which he would forfeit his right to lead evidence in the manner and thereafter Estate officer shall pass appropriate order in accordance with law within two weeks. Department may also lead evidence if they wish to.
4. Appeal is accordingly disposed of.”

5] After remand, Estate Officer has passed fresh order which was the subject matter of challenge in Appeal before the learned District Judge being the Appellate Authority. The learned District Judge vide order dated 14th October, 2021 rejected the Appeal. As such, this Petition.

6] Submissions of Mr. Vaishnav, learned Counsel for the Petitioner are, very notice issued by the Estate Officer under Section 4 of the said Act, 1971 is defective as the same is based on communication dated 6th February, 2019 providing 100% reservation. According to him, plain reading of said communication does not reflect that it provides for 100% reservation as is claimed in the show cause notice. His further contention is, Petitioner was in possession of the suit premises since 18th October, 1981 and his prayer for extension to use and occupy the premises for further period of five years was based on legitimate expectation from the Respondents. He would urge that said prayer ought to have been considered favourably.

7] His next limb of submission is, after remanding the matter to the

Estate Officer, Appellate Court i.e. District Judge in categorical terms has directed the Petitioner to lead evidence. Petitioner has brought to the notice of the Estate Officer that other occupants, occupying adjoining premises are not willing to depose in his favour because of threats issued by Personnel from Defence Department. His further contention is, though he has placed on record affidavit of examination-in-chief, he was not subjected to cross-examination and that being so, said evidence ought not to have been accepted as it is.

8] Mr. Vaishnav, in addition to above, would urge that the Court below is expected to consider that once similarly placed person (Tailor) is permitted to continue with the premises which is in exception to the alleged communication dated 6th February, 2019, Respondents have acted by adopting pick and choose method. Drawing support from the Judgment of the Apex Court in the matter of *City Industrial Development Corporation Through its Managing Director vs. Platinum Entertainment and Others* reported in **(2015) 1 SCC 558**, he would urge that aforesaid act on the part of the Respondents is required to be held in violation of Article 14 of the

Constitution of India. According to him, Respondents being State machinery are required to adhere to the principle of equality and that being so, impugned order is not sustainable. In addition to above, his contentions are, Petitioner has every right to adduce evidence before the authority i.e. Estate Officer even though provisions of the Evidence Act in stricto sense are not applicable. Drawing support from the judgment of the Apex Court in the matter of *New India Assurance Company Ltd vs. Nusli Neville Wadia and Another* reported in **(2008) 3 SCC 279**, para 49 onward, he would urge that denial on the part of Respondents in permitting the Petitioner to adduce evidence has resulted in denial of opportunity of hearing and that being so, the order impugned warrants interference.

9] Mr. Sonawane, learned Counsel for Respondents would support the order impugned. According to him, after first remand by the Appellate Court, it was for the Petitioner to be ready with witnesses and their affidavits which he has failed to. According to him, Petitioner has taken recourse to such procedure whereby he intends to delay the proceedings and frustrate the very object with which remedy

of eviction is provided. In addition, his contentions are, merely because Petitioner is occupying premises for last more than 25 years, that by itself does not give him any lever to act contrary to the guidelines of Ministry of Defence which are binding on the Petitioner. According to him, order passed by the Estate Officer is in tune with the very object with which the Act is enacted. He would urge that once the Petitioner's occupation is unauthorized, as he is not permitted to continue after extended period upto 30th May, 2021, the Estate Officer has rightly held him to be an unauthorized occupant. As such, he sought dismissal of the Petition.

10] Considered rival submissions.

11] The challenge before Appellate Authority i.e. District Judge was to the order of eviction dated 8th September, 2021. So as to establish the fact that Petitioner is in unauthorized occupation of the suit premises referred to above, affidavit of evidence was produced by the Respondents herein and the Petitioner has not chosen to cross-examine the said witness. Apart from above, there is no material on record to infer that beyond permissible time upto 30th May, 2021,

Petitioner was permitted to continue in lawful possession of the suit property. In that view of the matter, it cannot be said that Petitioner was in lawful possession and as such there is an error in recording finding that Petitioner is an unauthorized occupant of the suit property. Contention that Respondents have permitted another occupant viz Tailor to continue in the suit premises who is not covered within the classification prescribed under communication dated 17th January 2018 or communication dated 6th February, 2018 is concerned, such approach on the part of the Respondents even if is admitted for the sake of deciding present matter, same cannot be termed as discriminatory approach on the part of the Respondents, particularly when it is not demonstrated that such occupant was not within the purview of classification provided in the communication dated 17th January, 2018 issued by the Government of India. Apart from above, it is also not demonstrated by the Petitioner that such occupant was an unauthorized occupant as his period of occupancy is expired. In that view of the matter, support drawn from the judgment of Apex Court in the matter of *City Industrial Development Corporation* cited supra will be of hardly any significance.

12] As far as the contention of the Petitioner that there is denial of opportunity of hearing as he is not permitted to adduce evidence is concerned, this Court is required to be sensitive to the order of remand passed by the Appellate Court on 11th August, 2021 which is already reproduced hereinbefore. Though Petitioner has filed an affidavit of compliance of the said order of his own, he has neither produced affidavit of any witness nor offered himself as witness for recording of evidence. Rather, Petitioner has sought an excuse before the authority, saying that witnesses who are neighbours of the Petitioner operating their business are not willing to depose in his favour. Though Petitioner has filed an affidavit, he has not offered himself for recording of evidence. That being so, it cannot be said that there is denial of principles of natural justice as the authority has failed to record evidence of the Petitioner. Rather, conduct of the Petitioner demonstrates that he was not in a position to comply with the order of remand passed on 11th August, 2021 to the extent of producing his witnesses and keeping them present for cross-examination alongwith their affidavit of examination-in-chief. In that view of the matter, support drawn from the judgment of the Apex

Court in the matter of *New India Assurance Company Ltd.* cited supra is wholly misplaced.

13] In the aforesaid backdrop, if the order of eviction passed by the Estate Officer is perused, so also the order of Appellate Authority, it cannot be said that Petitioner was not an unauthorized occupant and the order is contrary to the record and provisions of the Act.

14] That being so, no error of jurisdiction or error of law is noticed so as to cause interference in the orders impugned. Petition as such fails and same stands dismissed.

(NITIN W. SAMBRE, J.)