

Prajakta Vartak

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

**WRIT PETITION NO. 379 OF 2014
WITH
INTERIM APPLICATION NO. 19307 OF 2022**

Nitin Parshuram Vichare ..Petitioner
Vs.
Union of India & Anr. ...Respondents

Ms. Sonam Singh with Ms. Shweta Rathod i/b. Elixir Legal Services for
Petitioner.

Mr. Y. R. Mishra with Mr. N. R. Prajapati and Mr. Upendra Lokegaonkar
for Respondent-UOI.

Mr. Ashish Kamat with Mr. Ashwin Bhadang i/b. Roma Chudasama for
intervenor/applicant.

**CORAM : G.S. KULKARNI, J.
DATE : JANUARY 06, 2023**

P.C.:

1. Heard Ms. Singh, learned counsel for the petitioner and Mr.
Mishra, learned counsel for the respondents.

2. This petition, which was filed on 12 January, 2014, assails an
order dated 19 December, 2013 passed by the Estate Officer,
International Wireless Monitoring Station, Gorai Road, Borivali (West),
Mumbai – 400 091 being passed under Section 5A(2) of the Public
Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short, “PP
Act”). There is no statutory appeal against the said decision as seen from

the provision of Section 9 of the PP Act.

3. As the proceedings in question were initiated against the petitioner under Section 5A(2) of the PP Act, it would be appropriate to note Section 5A, which provides for power to remove unauthorised constructions. Section 5A reads thus:-

“5A. Power to remove unauthorised constructions, etc.—

(1) No person shall—

(a) erect or place or raise any building or [any movable or immovable structure or fixture],

(b) display or spread any goods,

(c) bring or keep any cattle or other animal,

on, or against, or in front of, any public premises except in accordance with the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy such premises.

[(2) Where any building or other immovable structure or fixture has been erected, placed or raised on any public premises in contravention of the provisions of sub-section (1), the estate officer may serve upon the person erecting such building or other structure or fixture, a notice requiring him either to remove, or to show cause why he shall not remove such building or other structure or fixture from the public premises within such period, not being less than seven days, as he may specify in the notice; and on the omission or refusal of such person either to show cause, or to remove such building or other structure or fixture from the public premises, or where the cause shown is not, in the opinion of the estate officer, sufficient, the estate officer may, by order, remove or cause to be removed the building or other structure or fixture from the public premises and recover the cost of such removal from the person aforesaid as an arrear of land revenue.

(3) Where any movable structure or fixture has been erected, placed or raised, or any goods have been displayed or spread, or any cattle or other animal has been brought or kept, on any public premises, in contravention of the provisions of sub-section (1) by any person, the estate officer may, by order, remove or cause to be removed without notice, such structure, fixture, goods, cattle or other animal, as the case may be, from the public premises and recover the cost of such removal from such person as an arrear of land revenue.]”

4. The Estate Officer issued notices dated 27 December, 2012 and 14 January, 2013 to the petitioner/occupant under Section 5A(2) of the PP Act calling upon the petitioner to show cause as to why illegal immovable structure / fixtures on the said land (public premises) which belonged to the Government of India be not removed. Such notice was responded by the petitioner. It however appears that neither any document of title nor any sanctioned plan to construct such structures in question came to be placed/submitted by the petitioner before the Estate Officer.

5. From the enquiry as conducted by the Estate Officer, it is clear that the land in question on which the objected structures were put up by the petitioner belonged to the Government of India, International Monitoring Station (INS, Mumbai). The revenue record pertaining to the said land bearing Survey No.209, CTS No.4 shows possession of the Central Government. Also there is a Mutation entry No. 831 in village Form 6 which showed that the said plot was transferred to the Monitoring Station, Central Government on 25 March, 1959. In fact, as per the property card, some portion of the land is also covered by mangroves.

6. It appears that in the year 2004, there was some land filling activity and after such land filling activity, some unauthorised construction was put up on the said land. Also one pole put up by the Government of India was found broken. Some cement poles were also found missing. This was verified by the Engineer-In-Charge and a report to that effect dated 23 January, 2007 was prepared. The report of the Tahsildar, Borivali, records that there was land filling activity on the said plot for the purpose of putting up such unauthorized structures. The Municipal Corporation of Greater Mumbai had initiated action in regard to the unauthorized construction, on such land belonging to the Government of India. Such action of the Municipal Corporation was in fact challenged by the **unauthorized occupant/petitioner** by filing a Civil Suit before the City Civil Court against the Municipal Corporation being L.C. Suit No.1226 of 2007 and orders were obtained restraining the Municipal Corporation from taking any action in regard to the unauthorised construction. The subject matter of the said suit was notice issued by the Municipal Corporation under Sections 351 and 349 and the action under Section 488 of the Mumbai Municipal Corporation Act. The order passed in such suit and even the final decree was not binding on the Government of India as Government of India was not made the party, despite the Government of India being the owner of the

land.

7. In the aforesaid circumstances, by the notice issued under Section 5(A)(2) issued by the Estate Officer, proceedings were initiated against the petitioner for removal of the unauthorized construction culminating into the impugned order dated 19 December, 2013 being passed by the Estate Officer.

8. I have heard learned counsel for the petitioner for quite some time.

9. Learned counsel for the petitioner has argued that the decree which was passed in the suit filed by the petitioner before the City Civil Court entails to the benefit of the petitioner to assail the impugned order, hence no action could be taken by the respondents under the impugned order. She would next submit that the petitioner had become owner of the land by adverse possession and thus the impugned order would be required to be held to be bad and illegal on such count. There is no other submission as made by learned counsel for the petitioner to assail the impugned order.

10. On the other hand, Mr. Mishra, learned counsel for the respondent-Government of India has supported the impugned order. He

submits that the petitioner is a rank encroacher on the land owned by the Government of India, who had put up unauthorized construction. He submits that the land is required to be used for important public purpose. He submits that the petitioner did not produce any document whatsoever much less any document, which would even remotely indicate any right of the petitioner in respect of the said land as also the construction which is as it is unauthorised. He therefore submits that the impugned order passed by the Estate Officer ought not to be interfered and the petition be dismissed.

11. Having heard learned counsel for the parties and having perused the impugned order and the record, in my opinion, there is much substance in the contentions as urged by Mr. Mishra. At the outset, it is required to be observed that there is not a single document which would go to show ownership of the petitioner in respect of the land in question which admittedly belongs to the Central Government to be used for important public purpose of setting up an “International Monitoring Station”. Once the petitioner has no right, title and interest in respect of the said land, it is surprising as to how the petitioner could put up construction. It appears that the petitioner has encroached on the government land and put up the illegal construction. Even to undertake

such construction, no permission whatsoever was obtained by the petitioner from the municipal corporation. Learned counsel for the petitioner has categorically admitted that there are no sanctioned plans or any proposal of the petitioner submitted to the municipal corporation seeking any permission to put up the structure in question. Thus all this clearly would indicate that the petitioner was not only an unauthorized occupant, but also has undertaken illegal construction on the land belonging to the Government of India.

12. In so far as the contention as urged on behalf of the petitioner that the petitioner has become owner by adverse possession is concerned, such contention is required to be noted, only to be rejected, as on a query made to the learned counsel for the petitioner, she has fairly stated that no suit/proceedings whatsoever were filed by the petitioner seeking a declaration that the petitioner has become owner by the adverse possession, much less, the petitioner succeeding in any such proceedings.

13. In the aforesaid circumstances, it is quite clear that the petitioner at no point of time had any right whatsoever to either to remain on the said land nor put up any construction. Thus no fault can be found in the action taken against the petitioner under Section 5(A)(2) of the P.P. Act.

14. It needs to be observed that such instances of encroachment on Government land are not new and are rampant to the jurisprudence of encroachment and illegal construction in the city. Not only persons like the petitioner encroach on land, but they also induct other persons on land. If such persons who are in occupation of the land do not have the basic documents of title and/or any lawful permission as consented by the owner of the land to put up any structures, obtained from the municipal corporation/planning authority, no right much less a legal right of any of these persons to put up structures can be recognized. Such structures being illegal are required to be removed. It is also required to be noted that once the land is encroached by one person, the modus operandi is to induct other persons and independent proceedings are sought to be initiated at the behest of such persons so as to drag the Government authorities into unwarranted litigation and proceedings with the sole intent that such person can continue to occupy the Government land without any authority and that the valuable public land is illegally used by virtue of any interim orders till all the litigation ends. For all such period the Government/public body is deprived to use the land for public purpose. Such is the scene in respect of the land in question. It appears that the land has been not only encroached illegally

and/or occupied, but also enjoyed for all these years. Thus, no protection contrary to the rule of law can ever be granted to such persons to disrupt the legal rights of public bodies.

15. In the aforesaid circumstances, no case whatsoever has been made out for interference in this petition. The petition is accordingly dismissed. The Court has restrained itself from imposing costs, when in fact, this is a fit case for imposing compensatory costs.

16. It is clarified that the Government of India shall be permitted to take action in accordance with law to implement the orders.

17. At this stage, learned counsel for the petitioner seeks stay of this order. In the facts and circumstances of the case, the request of stay is rejected.

18. In the light of the above observations, the interim application stands dismissed.

[G.S. KULKARNI, J.]