

PVR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3668 OF 2024

Anil Khandelwal & Ors. ... Petitioner

Versus

Central Railways & Ors. ... Respondents

Mr. Sagar Kursija, for the Petitioner.

Mr. Suresh Kumar with Mrs. Sangeeta Yadav, for Respondents.

CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.
DATED: 13 March 2024

P.C.

1. This petition under Article 226 of the Constitution of India assails notices issued by the respondents to the petitioners dated 28 February 2024, calling upon the petitioners to vacate their occupation of the railway land within seven days from the receipt of the notices. The case of the petitioners is that they have legal rights to remain on such land. Such assertion is made referring to electricity bills and some other documents which are not a lease / transfer and/or allotment in favour of the petitioner by any public authority. The petitioners also dispute that the railway is the owner of the land. They contend that the land in question is of the Cantonment Board. It is in these circumstances, the present petition has been filed, praying for the following

reliefs:

“(a) This Hon’ble Court may kindly be pleased to issue appropriate writ, direction or order in the like nature thereby quashing and setting aside the impugned Notices dated 28/02/2024 issued by Respondent No.1 which are at ‘EXHIBIT G’;

(b) Pending the hearing and final disposal of the present Writ Petition, this Hon’ble Court may kindly be further pleased to stay the effect, operation and implementation of the impugned Notices dated 28/02/2024 issued by Respondent No.1 which are at ‘EXHIBIT G’;

(c) Pending the hearing and final disposal of the present Writ Petition, this Hon’ble Court may kindly further pleased to direct the Respondent No.1 not to take any coercive action on the basis of impugned Notice dated 28/02/2024 issued by Respondent No.1 which are at ‘EXHIBIT G’;

(d) Interim and Ad-interim orders in terms of prayer clause (b) and (c) above;

(e) Any other further order be granted as this Hon’ble Court may deem fit and proper.”

2. We may observe that in a similar case where the notices were issued by the Mumbai Port Authority to remove the encroachment on their land, this Court had not entertained the writ petition in the case “**Khurshid Ahmed Maksud Ahmed Khan & Ors. Vs. Mumbai Port Authority & Ors.**”¹ and had made the following observations:-

“2. This petition essentially assails the action to be resorted by the Mumbai Port Trust-respondent no. 1 in taking steps to remove the casual/unauthorised and illegal occupation/encroachment on the premises causing obstruction and nuisance as set out in the impugned notice dated 15 February, 2024 whereby such encroachment is sought to be removed.

3. The contention as urged on behalf of the Port Trust Authorities is that the petitioners do not have a legal right to continue to encroach the land belonging to the Mumbai Port Trust. It is evident from the record that such valuable land of the Port Authority is in no manner

¹ Writ Petition (l) No.6883 of 2024 dt. 28/2/2024

leased and/or licensed or allotted to the petitioners and hence, merely on the basis of photocopies of electricity bills and other documents, no right can be claimed.

.... .

6. We may also observe that for any orders to be passed by this Court on the present proceedings, the petitioners need to show that when they are asserting rights qua the public land, the petitioners have a legally enforceable right against the Port Authority, to remain in possession of the land. In the absence of any such legal right, the petitioners cannot espouse the jurisdiction of this Court under Article 226 of the Constitution of India to seek a relief which the law would not recognise. We also cannot accept the case of the petitioner to hold the petition to be maintainable merely on the petitioners contention that some of the petitioners are in possession for a long duration and hence they derive ownership or any other enforceable legal right in respect of the said land. Such contention cannot also be gone into in the proceedings filed under Article 226 of the Constitution of India, as these are disputed questions of fact which would require evidence to be led.

7. In our opinion, no case is made out for the petitioners for interference in the present proceedings under Article 226 of the Constitution of India which assails the impugned notice directing the petitioners to remove themselves from the land in question. We, accordingly, dismiss this petition. However, it is clarified that if the petitioners have any further legal remedy, the petitioners are free to pursue such remedy as the law may permit. If any such remedy is adopted, all contentions of the parties are expressly kept open. No costs.”

3. Learned Counsel for the petitioners however has submitted that on 5 March 2024 the petitioners have made representations to respondent No.1. In this context, learned Counsel for the Railways, on instructions, submits that in the event such representations are made and are received by the Railway's, the same shall be decided by the concerned officer of the said respondent, after granting personal hearing to the petitioners. It is also stated that till the representations are decided by a reasoned order, no coercive action would be taken against the petitioners.

4. Considering such stand as taken by the respondents, we are of the opinion that further adjudication of this petition is not called for. Let the representations be decided and the respondents abide by such statement. All contentions of the parties are expressly kept open.

5. Accordingly, the writ petition stands disposed of in terms of the above observations. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)