



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9542 OF 2025**

Pushpa Navinchandra Kothari and Anr. ... Petitioners
versus
The Board of Mumbai Port Authority and Anr. ... Respondents

**WITH
WRIT PETITION NO.8132 OF 2025**

Khandelwal Brothers Ltd. ... Petitioner
versus
The Board of the Mumbai Port Authority and Anr. ... Respondents

**WITH
WRIT PETITION NO.7677 OF 2025**

M/s. Ramnarain Sons Pvt. Ltd. ... Petitioner
versus
The Board of Trustees of the Port of Mumbai
and Anr. ... Respondents

**WITH
WRIT PETITION NO.9471 OF 2025**

Soli Shapurji Ragi and Ors. ... Petitioners
versus
The Board of the Mumbai Port Authority and Anr. ... Respondents

**WITH
WRIT PETITION NO.9474 OF 2025**

Kamalbir Singh and Anr. ... Petitioners
versus
The Board of Mumbai Port Authority and Ors. ... Respondents

Mr. Viren Asar with Mr. Ahuramazda Postvala, Mr. Sahil Saiyed, Mr. Neil Chettiar, Ms. Saloni Gupta i/by Saiyed Sahil M. Nagamiya, for Petitioners in WP No.9542 of 2025.

Mr. Viren Asar i/by Mr. Huzefa Nasikwala and Farzana Rine, for Petitioner in WP No.7677 of 2025.

Mr. Viren Asar with Mr. Farid Karichiwala, Mr. Ahuramazda Postwala, Ms. Krutika Mehta i/by J. Sagar Associates, for Petitioners in WP Nos.8132 of 2025, 9471 of 2025 and 9474 of 2025.

Mr. Shanay Shah with Mr. Roopadaksha Basu, Ms. Heenal i/by The Law Point, for Respondent No.1.

CORAM: N.J.JAMADAR, J.

DATE : 15 SEPTEMBER 2025

JUDGMENT :

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.
2. The challenge in these petitions is to the orders passed by the Estate Officer in the proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, deleting and/or reframing the issues which were initially settled. Since the background facts are, by and large, common, with a little variation, it was considered appropriate to decide all these petitions by this common order.
3. A common feature that emerges in these petitions is that, initially the Competent Authority had framed a large number of issues, apparently based on the assertions and denials in the pleadings and, post amendment in the Petitions, when applications for recast of the issues were filed, the Competent Authority deleted a number of issues observing, inter alia, that those issues were not necessary for the determination, and otherwise constricted the scope of the issues which were already framed by reframing those issues.
4. Respondent No.1 has initiated proceedings under the Act, 1971 to evict

the Petitioner(s) in the respective Petitions asserting, inter alia, that the Petitioners have become unauthorized occupants of the subject premises upon termination of their leases / occupancy rights and for compensation at rate claimed by the Respondent No.1.

5. The Petitioners have resisted the claim by filing affidavits in reply, inter alia, assailing the tenability of the proceedings on the count of bar of limitation or otherwise, and, jurisdiction of the Estate Officer to entertain, try and decide the proceedings, apart from contesting the merits of the claim that the Petitioners are the unauthorized occupants.

6. In Writ Petition No.9542 of 2025, initially issues were settled on 24 February 2020. Post amendment, on the applications for recast of issues filed by the Petitioner and Respondent No.1, the Estate Officer ruled that issue Nos.1, 2, 3, 5 and 11, as framed on 24 February 2020, were unnecessary, and, therefore, deleted those issues. Two issues with regard to the quantum of compensation, as proposed by the Respondent No.1, were added. The Petitioner preferred an application to restore issue Nos.1, 2, 3, 5 and 11 which were deleted. By an order dated 27 May 2025, the Estate Officer partly allowed the application by restricting the scope of issue of limitation to the recovery of arrears / compensation / damages for three years preceding the date of the filing of the Petition.

7. In Writ Petition No.9474 of 2025, issues were settled on 28 February

2020. Post amendment, the Estate Officer recast the issues on 5 December 2024 by deleting few of the issues which were framed on 28 February 2020 and framing new issues. On an application preferred by the Petitioners for recall of the said order dated 5 December 2024 and restoration of the issues settled on 28 February 2020, the Estate Officer only framed an additional issues regarding the bar of limitation to the extent of recovery of arrears / compensation for the period three years preceding the date of the filing of the eviction proceeding.

8. In Writ Petition No.7677 of 2025, the issues were settled on 12 April 2024. The Petitioner took out an application for recast / framing of additional issues. By an order dated 14 May 2025, the Estate Officer was persuaded to frame an additional issue, as to whether the said proceedings were barred by the principle of res-judicata and/or principle analogous thereto. Rest of the prayers of the Petitioner were rejected.

9. In Writ Petition No.9471 of 2025, on 16 May 2018, as many as 16 issues were framed. On the application filed for the framing of additional issues, by an order dated 13 November 2024, issues were recast. The Petitioners moved an application for recall of the said order dated 13 November 2024. The said application came to be rejected by an order dated 5 December 2024.

10. In Writ Petition No.8132 of 2025, the Estate Officer had initially framed

as many as 27 issues. An application for framing additional issues was filed by the Petitioner. Thereupon, by an order dated 4 October 2024, issues were recast and only four issues were framed. By a further order dated 13 November 2024, the Estate Officer again recast the issues.

11. Mr. Asar, learned Counsel for the Petitioners, submitted that the orders which have been impugned in these Petitions suffer from manifest infirmities. First, it was incumbent upon the Estate Officer to frame the issues on the basis of the pleadings. Having framed the issues, especially those of jurisdiction and limitation, it was not open for the Estate Officer to delete those issues for no rhyme or reason. Second, those issues could not have been deleted without providing an effective opportunity of hearing when the Estate Officer was called upon to only examine whether additional issues were required to be framed with regard to the quantum of compensation in view of the amendment in the applications for eviction. Third, by observing that, the issues originally framed by the Estate Officer were unnecessary, the Estate Officer has determined the course in which the eviction proceedings would be eventually decided. The observations that the issues of jurisdiction and limitation were unnecessary cause grave prejudice to the Petitioners. Lastly, Mr. Asar would urge, the exercise of settlement and determination of the issues cannot be *de hors* the pleadings of the parties. When the Petitioners have raised specific contentions in the written statement, it was incumbent

upon the Estate Officer to frame those issues.

12. To buttress these submissions, Mr. Asar placed reliance on the orders passed by this Court in the cases of **Gopalkrishna Digambarrao Kulkarni and Ors. V/s. Rajshekhar Digambarrao Kulkarni and Ors.**¹, **Mohd. Rafiq Abdul Shakoor V/s. The South Central Railway and Ors.**² and a decision of the Supreme Court in the case of **New Mangalore Port Trust and Anr. V/s. Clifford D Souza Etc.**³

13. In opposition to this, Mr. Shanay Shah, learned Counsel for Respondent No.1, would urge that the impugned orders do not warrant any interference in exercise of the supervisory jurisdiction. According to Mr. Shah, the Estate Officer is statutorily enjoined to determine the proceedings for eviction on the parameters which are germane to such determination under the Act, 1971. The Estate Officer is not bound by the procedure prescribed under the Code of Civil Procedure, 1908. What has to be seen is, whether the Estate Officer decides the eviction proceedings by posing unto himself the questions which are necessary for such determination. For that purpose, this Court may clarify that all the relevant considerations be kept in view and decided by the Estate Officer, de hors the issues which have been framed by the Estate Officer in each of the eviction proceedings.

14. Under Section 5 of the Act, 1971, the Estate Officer is empowered to

1 WP No.2159 of 2022 dt. 15 February 2022

2 WP No.8173 of 2023 dt. 20 June 2024

3 Civil Appeal Nos.1796-1828 of 2024 dated 3 April 2025.

make an order of eviction of a person, if he is satisfied that the public premises are in unauthorized occupation of such person. Two prime conditions are required to be satisfied before the order of eviction can be passed under Section 5. First, the premises in question must be a public premises. Second, the person against whom the proceeding is initiated must be in unauthorized occupation of such public premises.

15. Section 8 of the Act, 1971, confers on the Estate Officer the same powers as are vested in Civil Courts under the Civil Procedure Code when trying a suit, for the purpose of holding an inquiry under the said Act, in respect of the following matters only :

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) any other matter which may be prescribed.

16. The provisions of the Civil Procedure Code are not applicable to the proceedings before the Estate Officer in its strict rigour. Nor the Estate Officer is expected to follow the elaborate procedure prescribed under the Code, for the trial of suits, in deciding applications for eviction of unauthorized occupants. Rule 5 of the Public Premises (Eviction of Unauthorized Occupants) Rules, 1971, inter alia, provides that the Estate Officer shall record the summary of the evidence tendered before him and the summary of

such evidence and any relevant documents filed before him shall form part of the record of the proceedings.

17. Undoubtedly, the Estate Officer is enjoined to adopt such procedure while conducting an inquiry under the Act, 1971, as is in conformity with the principles of natural justice and fundamental principles of judicial process. Framing of issues is not mandatory. The Estate Officer is, however, expected to frame the points which arise for determination and determine those points in accordance with law.

18. A useful reference, in this context, can be made to a Division Bench judgment of this Court in the case of **Nandini J. Shah and Ors. V/s. Life Insurance Corporation of India and Ors.**⁴, wherein the following observations were made :

“7. The order impugned can be dissected into two different parts. Firstly, where the Estate Officer has declined to frame issues on the ground that all provisions of Civil Procedure Code are not applicable to the proceedings before the Estate Officer and secondly, where it has been directed that the petitioners’ (opposite parties) before the Estate Officer to prove their authority to occupy the premises and requiring them to start evidence in the first instance. As far as framing of the issues is concerned, the view taken by the Estate Officer would hardly call for any interference. It is true that the provisions of the Code of Civil Procedure are strictly not applicable to the proceedings before the Estate Officer and

4 2008(4) Mh.L.J. 106

the Estate Officer is also not expected to follow the detailed procedure as contemplated under the provisions of the Code. Section 8 of the Act gives power of a Civil Court to the Estate Officer limited for the purposes which are specified in that section. The Estate Officer is expected to adopt the procedure which is in conformity with the principle of natural justice. It is not mandatory for an Estate Officer to frame issues in the strict sense of the term as contemplated under Order 14 of the Civil Procedure Code. It normally is the discretion of the Estate Officer depending on the facts and circumstances of the case. It may be appropriate to decide the matter with reference to the points in controversy. The order of the Estate Officer would not be open to question merely because he has failed to frame the issues as understood in strict legal parlance. However, it may always be appropriate for the Estate Officer and for that matter, any authority performing quasi judicial function, to formulate the points of decision and decide them in accordance with law.” (emphasis supplied)

19. Mr. Asar would urge that, though it was not obligatory for the Estate Officer to frame the issues, yet, once the issues were framed, on the basis of the pleadings of the parties, the Estate Officer ought not to have deleted those material issues.

20. I have carefully considered the material on record. It appears that, initially the Estate Officer had settled a large number of issues which were essentially not warranted for the determination of the eviction proceedings. As noted above, the factors which are primarily and peremptorily required to

be evaluated are : whether the subject premises is a public premises, whether the person sought to be evicted is the unauthorized occupant thereof and is there any bar to pass an order of eviction. The myriad issues which do not cover the aforesaid aspects were not required to be framed.

21. Having given anxious consideration to the governing legal position and the facts of the case in each of the petitions, in my view, the petitions deserve to be partly allowed only to the extent of framing the issues which touch upon the aforesaid primary and peremptory matters.

22. Hence, the following order :

ORDER

(i) Writ Petition Nos.9542 of 2025 stands partly allowed.

(1) The impugned order stands modified as under :

A. The Estate Officer shall frame the following issues :

(a) Do the Petitioners prove that the subject premises are public premises within the meaning of Section 2 of the Act, 1971 ?

(b) Do the Petitioners prove that the Respondents are in unauthorized occupation of the subject premises ?

B. Issue No.6A be recast as under :

Whether the Petitioners claim or any part of it is barred by limitation ?

.....

(ii) Writ Petition No.8132 of 2025 stands partly allowed.

(1) The impugned order stands modified as under :

The Estate Officer shall frame the following issues :

(a) Do the Petitioners prove that the subject premises are public premises within the meaning of Section 2 of the Act, 1971 ?

(b) Whether the Petitioners claim or any part of it is barred by limitation ?

.....

(iii) Writ Petition No.7677 of 2025 stands partly allowed.

(1) The impugned order stands modified as under :

The Estate Officer shall frame the following issues :

(a) Do the Petitioners prove that the subject premises are public premises within the meaning of Section 2 of the Act, 1971 ?

(b) Whether the Petitioners claim or any part of it is barred by limitation ?

.....

(iv) Writ Petition No.9471 of 2025 stands partly allowed.

(1) The impugned order stands modified as under :

The Estate Officer shall frame the following issues :

(a) Do the Petitioners prove that the subject premises are public premises within the meaning of Section 2 of the Act, 1971 ?

(b) Whether the Petitioners claim or any part of it is barred by limitation ?

.....

(v) Writ Petition No.9474 of 2025 stands partly allowed.

(1) The impugned order stands modified as under :

A. The Estate Officer shall frame the following issues :

(a) Do the Petitioners prove that the subject premises are public premises within the meaning of Section 2 of the Act, 1971 ?

B. Issue No.8 stands recast as under :

Whether the Petitioners claim or any part of it is barred by limitation.

(vi) Rule made absolute in the aforesaid terms with no order as to costs.

(N.J.JAMADAR, J.)