

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9263 OF 2025

Ujwala Laxman Walavalkar alias Ujwala
Gandhi

...Petitioner

Versus

Life Insurance Corporation of India

...Respondent

SANTOSH
SUBHASH
KULKARNI

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Mr. Surel Shah, Senior Advocate a/w Ms. Vinodini
Srinivasan, Aamir Ali Sheikh, Kush Shah and Aamir
Attari, i/b Ivory Legal, for the Petitioner.
Mr. V. Y. Sanglikar, for the Respondent.

CORAM: N. J. JAMADAR, J.
DATED: 8th JULY, 2025

ORDER:-

1. This petition under Article 227 of the Constitution of India assails an order passed by the Estate Officer on 1st July, 2025, seeking recall or stay of the order of issue of possession warrant in respect of public premises, dated 9th June, 2025.

2. The petitioner claims to be a tenant in respect of the public premises belonging to the respondent. In the year 1997, the respondent had filed eviction application being Case Nos.711 and 711A of 1997 against legal representatives of the original tenant Sitaram Hirlekar and the petitioner, who was alleged to be unauthorised occupant. By an order

dated 3rd August, 1998, the Estate Officer ordered the eviction of the petitioner and the other opposite parties thereto from the public premises. The petitioner preferred an appeal being Misc. Appeal No.91 of 1998 before the Principal Judge, City Civil Court, Bombay. On 4th September, 2000, the petitioner sought permission to withdraw the appeal asserting that the dispute was settled between the parties. Accordingly, the appeal stood dismissed for want of prosecution. The petitioner claimed that she was induced to withdraw the appeal by the respondent by making a representation to her that if she withdraws the appeal the tenancy would be transferred in favour of the petitioner. Copy of the without prejudice communication dated 17th August, 2000 is annexed to the petition.

3. It is the claim of the petitioner that she was, however, unauthorisedly and illegally dispossessed of the public premises. Subsequently, the petitioner was reinstated in possession of the public premises. However, the respondent failed to take steps to transfer the tenancy in favour of the petitioner. Suddenly, after lapse of more than 20 years period, notices were issued to Mrs. Tejaswini Gandhi, the daughter of the petitioner, calling upon her to explain as to under what

authority and with whose permission she has been in the occupation of the public premises. Eventually, on 25th June, 2025, the petitioner and others were informed that the Estate Officer has issued warrant of possession and it would be executed on 4th July, 2025.

4. The petitioner filed this petition. In the meanwhile, the petitioner also approached the Principal Judge, City Civil Court, by preferring an Appeal (St) No.9189 of 2025. The learned Principal Judge dismissed the appeal, observing that the appeal was not tenable.

5. Mr. Surel Shah, the learned Senior Advocate for the petitioner, would submit that after the petitioner was reinstated in possession, she has been in possession of the public premises for over 23 years. The petitioner was induced to withdraw the appeal by making a representation that the tenancy would be transferred in her favour. In such circumstances, if the respondent was to evict the petitioner, it was incumbent upon the respondent to initiate fresh proceeding under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 ('the Public Premises Act, 1971'). The order of eviction passed by the Estate Officer on

3rd August, 1998 thus could not have been executed by straightway issuing possession warrant.

6. Mr. Sanglikar, the learned Counsel for the respondent, countered the submissions on behalf of the petitioner. It was submitted that the petitioner had entered into the public premises after she was evicted in execution of the order passed by the Estate Officer on 3rd August, 1998 by committing criminal trespass. A prosecution was lodged leading to Criminal Case No.201/P5/2005. The petitioner, who is an unauthorized occupant has no right to occupy the public premises.

7. Mr. Sanglikar placed reliance on an order passed by the Division Bench of this Court in the case of *M/s. CAPCO Private Ltd. and anr. vs. Life Insurance Corporation of India and anr.*¹, wherein it was enunciated that neither the Public Premises Act, 1971 provides any limitation for enforcement or execution of the order of eviction passed under Section 5 of the Public Premises Act, 1971 nor the Limitation Act, 1963 is applicable to the execution and enforcement of such order. Therefore, the petition does not deserve to be entertained.

1 Writ Petition No.1362/2001 dtd.25/9/2002.

8. I have perused the material on record. The fact that the Estate Officer had passed an order of eviction under Section 5 of the Public Premises Act, on 3rd August, 1998 and the appeal preferred thereagainst by the petitioner came to be dismissed for want of prosecution, are not in contest. The thrust of the submission on behalf of the petitioner was that the petitioner was induced to withdraw the said appeal. However, the Court cannot lose sight of the fact that on 30th April, 2002 itself the petitioner had addressed notices to the respondent as well as the Estate Officer specifically alleging that on 18th April, 2002 the petitioner was unauthorisedly evicted of the public premises. The respondent and the Estate Officer were called upon to remove the seal and restore the possession of the public premises to the petitioner. Lest appropriate civil and criminal proceedings would be initiated against the respondent.

9. The situation which, thus, obtains is that the eviction order was duly executed. The petitioner lost possession of the public premises. It is not the case that any tenancy agreement was thereafter executed. Nor there is any other material to show that the petitioner continued in possession of the public premises pursuant to any legitimate transaction

between the petitioner and respondent. On the contrary, the petitioner was prosecuted for having committed criminal trespass.

10. In these circumstances, the submission of Mr. Shah that the respondent must afresh initiate proceeding for eviction of the petitioner from the public premises does not merit countenance. The petitioner was found to be an unauthorized occupant of the public premises. If the petitioner was aggrieved by her dispossession, pursuant to the order passed by the Estate Officer, despite an assurance of transfer of tenancy, the petitioner ought to have resorted to the remedies in the year 2022 itself. In the absence thereof, if the petitioner is permitted to occupy the public premises despite having suffered eviction, pursuant to the order passed by the Estate Officer, it would amount to putting a premium on the illegality of occupying the public premises by allegedly committing criminal trespass.

11. There is not a shred of material to show that the respondent accepted the occupation of the public premises by the petitioner either expressly or implicitly by any act, conduct or acquiescence. Even otherwise, in view of the decision in the case of *M/s. CAPCO Private Ltd.* (supra), there

is no impediment in executing the order of eviction dated 3rd August, 1998. Thus, the petition does not deserve to be entertained.

12. The petition stands dismissed.

[N. J. JAMADAR, J.]