

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 526 OF 2024

1. Bharat Pandurang Kadam,
Adult, Indian Inhabitant,
H.No. 12, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai-400 015.
2. Gulam Mohammed Rafiq Panjabi,
Adult, Indian Inhabitant,
H.No. 01, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
3. Mohammed Salim Rafiq Panjabi,
Adult, Indian Inhabitant,
H.No. 03, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
4. Mohammad Ali Shoukat Ali Shaikh,
Adult, Indian Inhabitant,
H.No. 04, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
ewri, Mumbai- 400 015.
5. Mohammed Asalam Jamadar Jamadar,
Adult, Indian Inhabitant,
H.No. 05, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
6. Samshad Hadi Shaikh,
Adult, Indian Inhabitant,
H.No. 06, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,

Sewri, Mumbai- 400 015.

7. Chandbi Gulab Shaikh,
Adult, Indian Inhabitant,
H.No. 07, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015
8. Jyoti Dagadu Gotmare,
Adult, Indian Inhabitant,
H.No. 09, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
9. Pandurang Vishwanath Dalavi,
Adult, Indian Inhabitant,
H.No. 10, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015
10. Badarshah Haidar Badshah,
Adult, Indian Inhabitant,
H.No. 11, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
11. Asama Banoo Mohammed Mustakim Shaikh,
Adult, Indian Inhabitant,
H.No. 13, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015
12. Mohammed Ibrahim Jamil Khan,
Adult, Indian Inhabitant,
H.No. 14, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
13. Shivmohan Motilal Yadav,
Adult, Indian Inhabitant,
H.No. 16, Rajiv Gandhi Vasahat,

Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.

14. Kalim Badruddin Ansari,
Adult, Indian Inhabitant,
H.No. 18, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
15. Bimlavati Motilal Yadav,
Adult, Indian Inhabitant,
H.No.19, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
16. Salim Rajjak Fakir,
Adult, Indian Inhabitant,
H.No. 20, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
17. Mumtaj Rajjak Fakir,
Adult, Indian Inhabitant,
H.No. 21, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
18. Abdul Usman Solkar,
Adult, Indian Inhabitant,
H.No. 22, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
19. Abdul Aziz Abdul Ismail Jamadar,
Adult, Indian Inhabitant,
H.No. 23, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
20. Vishnu Pandurang Sapkal,
Adult, Indian Inhabitant,

H.No. 24, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.

21. Asha Rajesh Tuplonde,
Adult, Indian Inhabitant,
H.No. 25, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
22. Badruddin Shaubat Ansari,
Adult, Indian Inhabitant,
H.No. 26, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
23. Malikunisha Mohammed Mustaqim Shaikh,
Adult, Indian Inhabitant,
H.No. 27, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
24. Ramesh Kumar Indradev Tiwari,
Adult, Indian Inhabitant,
H.No. 28, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
25. Mangala Manohar Jadhav,
Adult, Indian Inhabitant,
H.No. 29, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
26. Pandurang Ramchandra Kadam,
Adult, Indian Inhabitant,
H.No. 30, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
27. Ajarunnisa Ameer Ahmed,

- Adult, Indian Inhabitant,
H.No. 31, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
28. Mustaqim Ahamed Shaikh,
Adult, Indian Inhabitant,
H.No. 32, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
29. Azmatali Bechanali Khan,
Adult, Indian Inhabitant,
H.No. 33, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
30. Akbar Ali Hasan Shaikh,
Adult, Indian Inhabitant,
H.No. 34, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
31. Madhuri Mahajan Paikra,
Adult, Indian Inhabitant,
H.No. 35, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
32. Bharati Kisan Lokhande,
Adult, Indian Inhabitant,
H.No. 36, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
33. Pramod Gajanan Gangan,
Adult, Indian Inhabitant,
H.No. 38, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.

34. Satish Govind Wable,
Adult, Indian Inhabitant,
H.No. 39, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
35. Sarita Sitaram Pavaskar,
Adult, Indian Inhabitant,
H.No. 40, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
36. Pratibha Prabhakar Dolas,
Adult, Indian Inhabitant,
H.No. 41, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
37. Motiram Sonu Arde,
Adult, Indian Inhabitant,
H.No. 42, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
38. Fulchand Laxman Pawar,
Adult, Indian Inhabitant,
H.No. 43, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
39. Ram Fulchand Pawar,
Adult, Indian Inhabitant,
H.No. 44, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
40. Jahangir Ahmed Zakir Ali Qureshi,
Adult, Indian Inhabitant,
H.No. 46, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.

41. Mohammed Javed Mohammed Ali Shabdi,
Adult, Indian Inhabitant,
H.No. 48, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
42. Govind Baburao Vable,
Adult, Indian Inhabitant,
H.No. 49, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
43. Santosh Bhiva Kulaye,
Adult, Indian Inhabitant,
H.No. 50, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
44. Rita Rajendra Tiwari,
Adult, Indian Inhabitant,
H.No. 51, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
45. Shahjahan Mohd. Shabbir Shaikh,
Adult, Indian Inhabitant,
H.No. 52, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
46. Nisarul Haq Jiyaul Shaikh,
Adult, Indian Inhabitant,
H.No. 53, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.
47. Nasihat Parveen Mohd Naeem Shaikh,
Adult, Indian Inhabitant,
H.No. 54, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,

Sewri, Mumbai- 400 015.

48. Aijazulhaq Nisarulhaq Shaikh,
Adult, Indian Inhabitant,
H.No. 55, Rajiv Gandhi Vasahat,
Fort Road, Near Colgate Company,
Sewri, Mumbai- 400 015.

... Petitioners

Versus

1. Mumbai Ports Authority,
(Formerly known as The Board of Trustees
of the Port of Mumbai)
A statutory corporation having its
registered office at Vijay Deep, Shoorji
Vallabhdas Marg, Fort, Mumbai-400001.
2. Slum Rehabilitation Authority,
Administrative Building, Anant Kanekar Marg,
D Block BKC, Naupada, Bandra East,
Mumbai 400 051.
3. Union of India,
Through Office of Government Pleaders,
Original Side, Bombay High Court,
Fort, Mumbai- 400 001

...Respondents

Mr. Prerak Choudhary, for Petitioners.

Dr. Milind Sathe, Senior Advocate, with Mr. Roop Basu, Mr. Ahmed
Padela i/b The Law Point, for the Respondent No.1.

Mr. J.G.Reddy, for Respondent No.2-SRA.

CORAM : REVATI MOHITE DERE &

DR. NEELA GOKHALE, JJ.

DATED : 10th JANUARY 2025.

P.C.:-

1) This Petition assails notice dated 30th October 2023 issued by the Respondent No.1 under Bye-law No.9 of its General Bye-laws. By the said notice, the Respondent No.1 has called upon unauthorized occupants, including the Petitioners herein to vacate the premises at Plot No.8 at Vadala Estate and the adjoining Mumbai Port Authority's area ('Said Premises') within a period of 12 hours from the time of affixing the said notice. The notice also stated that failure to remove/arrange for removal of the encroachment/obstruction shall result in the Authority selling all valuable material, if any, at the cost of the Petitioners in addition to the recovery of an amount of penalty as provided for under the Bye-laws.

2) By an ad-interim order dated 2nd November 2023, this Court (*Coram: G.S. Patel & Kamal Khata, JJ*) had directed the Respondent No.1 to abstain from implementing any order, if passed for removal of structures for a period of at-least one week from the date of communication of the order to the affected parties. The action of eviction impugned in the Petition was also stayed till 30th November 2023.

3) The Petitioners have challenged the impugned eviction notice *inter alia* on the grounds that they were in occupation of the premises for over three decades; that a twelve hour notice was *ex-facie* unreasonable; that the said premises have been surveyed by the Respondent No.2-Slum

Rehabilitation Authority under the Slums Act entitling the Petitioners for rehabilitation under the said Act; and that principles of natural justice are violated.

4) Heard Mr. Prerak Choudhary, learned counsel for the Petitioners and Dr. Milind Sathe, learned Senior Counsel for the Respondent No.1 and perused the records with their assistance.

5) At the very outset, Dr. Sathe drew our attention to an order dated 28th February 2024 passed by a Co-ordinate Bench of this Court in Writ Petition (L) No. 6883 of 2024 in the matter of ***Khurshid Ahmed Maksud Ahmed Khan & Ors.*** The Petitioners in that Petition had also assailed the action resorted to by the Respondent No.1 herein to remove the casual/unauthorized and illegal occupation/encroachment on its premises causing obstruction and nuisance. This action was also contemplated under Bye-law No.9 of the General Bye-laws of the Respondent No.1-Authority.

6) The contention as urged on behalf of the Port Trust Authorities in the present matter as well as in the previous matter is that the Petitioners do not have a legal right to continue to encroach the land belonging to the Mumbai Port Trust and that there is no material to indicate that such valuable land of the Port Authority is in any manner 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.

7) We enquired with the Petitioners as to their legal rights or entitlement to occupy the said premises. Mr. Choudhary stated that some of the Petitioners had instituted Civil Suits in various Courts seeking declaration of their rights and the suits are pending. Admittedly, no orders have been passed by any Court of competent jurisdiction. Apart from the said statement, the Petitioners were unable to point out any legal right to remain on the Port Trust land. No satisfactory answer which would deserve any acceptance in law was provided.

8) Admittedly, in the present case, there is no challenge to the Bye-law No.9 of the General Bye-laws. The relevant portion of order dated 28th February 2024 passed by this Court in ***Khurshid Ahmed (Supra)*** reads as thus:

“5) We are not persuaded to accept the contention as urged on behalf of the petitioners that such order can be construed to be any blanket restraint on the Mumbai Port authority not to take recourse to the said bye-laws or the bye-law being struck down. What has been objected by the Court appears to be a short notice of 12 hours as issued by the Mumbai Port authority in the said case, although the notice being under General Bye-Laws no. 9 and in such circumstances, the Court directed that the notice to

be at least of 7 days. We cannot read the said interim order to be construed as invalidating bye-law no. 9 and as rightly contended on behalf of the Port Trust, the order can be construed to be suspension of the immediate action to be taken under the bye-law no. 9 in the facts of the said case. This is clear from the fact, that as the Court has categorically observed that if an order is passed for removal of structures, it will not be implemented for a period of one week from the date the order is communicated to the affected parties. In the present case, in any event, the impugned notice itself is a notice of 7 days and hence, even referring to the said order dated 2 November, 2023 passed by the co-ordinate Bench of this Court, the petitioner could have no grievance of such notice.

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.

9) Dr. Sathe also drew our attention to the judgment and order dated 27th March 2018 also passed by a co-ordinate Bench of this Court in a bunch of Writ Petitions involving similar issue whereby Petitioners therein were also called upon to vacate the premises within twelve hours of the notices issued to them. In those Petitions, a declaration was sought to declare the Bye-law No.9 of the General Bye-laws as *ultra vires* the Provisions of the Public Premises (Eviction of Unauthorized Occupants) Act of 1971 and/or the Major Port Trusts Act, 1863. While dismissing the Petitions, this Court held as under:

“53.Considering these aspects and with a view that the hardship, being caused to the petitioners by directing their removal within a few hours, to be relieved, we deem it appropriate to grant three months’ time to the petitioners to vacate their unauthorized occupation over the properties belonging to the Bombay Port Trust. The petitioners shall relocate themselves and vacate their

unauthorized occupation over the properties belonging to the Port Trust, within a period of three months from today. If the petitioners fail to vacate unauthorized occupation at the end of three months, it would be open for the Port Trust authorities to apply coercive means for evicting the petitioners.”

10) The said judgment and order dated 27th March 2018 was assailed before the Supreme Court by way of Special Leave Petition (C) No.15137 of 2018. The said SLP was also dismissed by order dated 11th June 2018 and the Supreme Court was only pleased to extend the time to vacate as granted by this Court, by a further period of three months from the date of its order.

11) Considering that a challenge to the Bye-laws more particularly Bye-law No.9 was rejected by this Court in earlier proceedings, and the said decision being ratified by the Apex Court, the Bye-law holds the field as of today. Considering the view taken by the Co-ordinate Bench of this Court that in ***Khurshid Ahmed’ case (Supra)*** that *sans* any legal entitlement nor any legal right to occupy the said premises, the Petitioners cannot be permitted to continue to encroach on the said premises and the grounds in the present petition same as those in Khurshid’s case (*supra*), we are not inclined to interfere in the present proceedings under Article 226 of the Constitution of India. The Petitioners have already continued occupation

for almost one and half year after receipt of the eviction notice impugned herein. Be that as it may, in the peculiar facts of the present case and purely on humanitarian grounds we deem it appropriate to grant some time to the Petitioners to remove the unauthorized occupation on the said premises in terms of the impugned notice issued by the Respondent No.1. Hence, we pass the following order:

ORDER

- (i) The Petition is dismissed.
- (ii) The Petitioners are directed to comply with the impugned notice dated 30th October 2023 and vacate the said premises within a period of four months from the date of uploading this order.
- (iii) Interim order, if any, stands vacated.

12) All parties to act on an authenticated copy of this order.

(DR. NEELA GOKHALE, J.) (REVATI MOHITE DERE, J.)