

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3084 OF 2026

Eknath Laxman Shamser and Others

VERSUS

The Estate Officer Central Railway Zone And Another

...

Advocate for Petitioners : Mr. S.S. Gangakhedkar

Advocate for Respondent No.1 : Mr. N.U. Yadav

...

CORAM : S. G. CHAPALGAONKAR, J.

DATED : APRIL 06, 2026

PER COURT :-

1. Heard Mr. Gangakhedkar, learned advocate appearing for petitioners and Mr. Yadav, learned advocate appearing for respondent no.1.
2. Mr. Gangakhedkar, learned advocate appearing for petitioners seeks leave to delete respondent no.2 as he was made formal party in this petition. Accordingly, leave granted. Amendment to be carried out forthwith.
3. Present petition takes exception to order dated 16.02.2026/23.02.2026 issued by respondent no.1 under provisions of Sub-section (1) of Section 5 of Public Premises (Eviction Of Unauthorised Occupants) Act, 1971 ('Act of 1971' for short). The record indicates that petitioners were served with a notice under Sub-section (1) and (2) of Section 4 of Act of 1971. They replied to said notice with supporting documents to establish their title and refuted

claim that property is public premises within meaning of Act of 1971. However, impugned orders are passed by Estate Officer without delving into reply and documents tendered by petitioners. The petitioners seek to invoke jurisdiction of this Court citing emergent situation that now, execution of order is undertaken and men along with JCB machines and equipments are ported at premises.

4. Having considered submissions by learned advocates appearing for respective parties and after going through documents tendered into service, *prima facie*, this Court finds that petitioners are in possession of respective property since 1985. They have constructed houses under government scheme. *Prima facie*, they have documentary evidence to show that they are holding title to property. However, fact remains that under Section 9 (2)(a), order passed under Section 5 or Section 5 (b) by Estate Officer can be challenged in appeal before District Judge. The petitioners have efficacious alternate remedy to ventilate their grievance against impugned order. In this backdrop, this Court finds that petitioners needs to be relegated to exhaust alternate statutory remedy as available under law. However, looking to emergent situation and documents tendered before this Court, this Court deems it appropriate to grant limited protection in favour of petitioners so that they can approach District Judge with appeal under Section 9 of Act of 1971. In this backdrop, following order is passed :

ORDER

- (i) Writ Petition stands disposed of with liberty in favour of petitioners to approach learned District Judge under Section 9 of Act of 1971 within a period of 15 days from date of this order.
- (ii) Till then, no coercive steps shall be taken against petitioners in pursuance to impugned order.
- (iii) In case, petitioners file appeal within aforesaid period, learned District Judge shall consider petitioners prayer for grant of interim relief in accordance with law.
- (iv) Needless to state that time consumed in prosecuting present writ petition shall be considered while counting period of limitation.

(S.G. CHAPALGAONKAR, J.)