

Gaikwad RD

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 3572 OF 2023

Ekta Welfare Society ...Petitioner
Versus
The State of Maharashtra & Ors ...Respondents

Mr AA Siddiquie, i/b, AA Siddiquie & Associates, for the Petitioner.
Mr LT Satelkar, AGP, for Respondent/State.
Mr AR Gole, for Respondents Nos. 2 to 5/Railways.
Ms Shilpa Redkar, for Respondent No.8/MCGM.

CORAM G.S. Patel &
Neela Gokhale, JJ.
DATED: 8th February 2023

PC: -

1. The Respondent Nos. 2 to 5 are represented and waived service. We have explained to their Advocate that we urgently require an affidavit explaining what, if any, steps the Railways have taken following the orders of the Supreme Court annexed to this Petition, and in particular the order dated 16th December 2021 of a three Judge Bench in SLP (C) Diary No. 19714 of 2021.
2. We think it would be appropriate to reproduce the relevant portion of that order from page 57 to 63.:

“According to Western Railways, the primary responsibility to ensure that no encroachment takes place on any property is that of the local Government and also of the State Government, in equal measure.

Although, the submission seems to be attractive at the first blush, does not commend to us. For, there is a special enactment which enables the Railway authorities to protect its property. That is its statutory and public trust obligation. It was open to the concerned Authority to invoke the provisions of special enactment including the Public Premises Act. For that, the Estate Officers should have moved into action in right earnest at the earliest opportunity. Even that option is not being invoked for reasons best known to the Authorities. Besides, the Railway establishment maintains a Railway police force whose services could be utilized to safeguard the Railways property, wherever it is situated.

As a result, the nuanced distinction made by the learned counsel for Western Railways does not commend to us. We hold that the Railways are equally responsible for the situation; and for which reason, it is also equally liable to provide some support to the persons likely to be affected by the removal of their structures.

Hence, keeping in mind the dictum of this Court in *Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan* reported in (1997) 11 SCC 121, on that analogy, we propose to issue following directions:

(i) The Respondent - Western Railways do immediately issue notices to the occupants of the concerned structures which are failing within the belt which is required immediately for commencing the remaining project work by giving two weeks' time to the concerned occupant (s) to vacate the respective premises;

(ii) In respect of the remaining land owned by Railways, even though it may not be immediately required for the project, similar notice be given to the occupants of structures standing thereon by giving six weeks' time to vacate the respective premises; and 59 falling

(iii) In either case (i) and (ii) above, the notices be issued within one week from today and if the occupants fail to vacate the unauthorized structure, it will be open to the Respondent-Western Railways to initiate appropriate action to forcibly dispossess them and to demolish or remove the unauthorized structure (s) by taking assistance of the local police force. The Superintendent/ Commissioner of Police of the concerned area shall ensure that adequate police force is deployed on the site and surrounding areas including to provide protection to the officials/staff engaged in the demolition of unauthorized structures and to facilitate them to commence the eviction process and demolition of the unauthorized structures, referred to in the eviction notices on the specified date and time;

(iv) Before commencing the process of eviction and removal of the structures, the Collector of the concerned District must ensure that necessary details about the names and number of persons occupying the concerned structure, including their identity and profile should be duly recorded, which record should be preserved Collector for considering the eligibility of those persons for being provided suitable residential accommodation after being evicted owing to proposed demolition action;

(v) The entity, who is the owner of the land, namely, Western Railways in this case as well as the local Government and the State Government shall be jointly and severally liable to pay a sum of Rs. 2,000/- per month per demolished structure for a period of six Months from the date of demolition of their structure as ex-gratia amount to

the head of family/occupants of the concerned unauthorized structure removed during demolition action. That amount shall be initially paid by the Collector for a period of six months "only" (not beyond six months each) and shall be later on shared equally by the entity (owner of the land), local Government and State Government;

(vi) In the event, the local Government has any rehabilitation scheme, the affected persons may apply for being rehabilitated under said scheme, if eligible and subject to verification of eligibility and complying with all other terms and conditions of the prevalent scheme. The local Government may provide them suitable residential accommodation in lieu of rehabilitation owing to demolition of their structure.

(vii) If no rehabilitation scheme has been formulated by the local Government or is in force, the persons likely to be affected by the action of demolition can apply for allocation of residential premises under the Pradhan Mantri Awas Yojna Scheme, which application be processed not later than six months from the date of its receipt and taken to its logical end, application-wise within such period.

(viii) Be it a case of rehabilitation under clause (vi) or (vii) above, the persons affected by demolition action by the Authorities cannot insist for allotment of alternative residential accommodation at the same place from where they have been evicted (as it is not in situ rehabilitation programme). The eligible persons be allotted accommodation wherever available in the same or even in neighbouring districts.

(ix) In addition, since the Railways have power to initiate civil/criminal action against the unauthorised occupants on the Railway property, must resort to those proceedings against the concerned persons immediately after it is

brought to the notice to the concerned official of the Railways.

Further, the Railways being the owner of the property, as also the local Government and State Government must initiate appropriate action against the erring persons, including the officials of the concerned establishment for allowing and tolerating such encroachment and for not taking corrective action of removal of encroachments in right earnest and at the earliest opportunity.

(x) The status report of the action taken by the Railway Board as also by the local Government and State Government be furnished to this Court before the next date.”

3. At present, there is no information available to us on subparagraphs 1 to 7 of this order. By a later order of 14th July 2022, it was noted that encroachments on the Western Railway property and in relation to the Surat Municipal Corporation had been cleared. The Supreme Court was told that the persons affected would be accommodated or rehabilitated under the Prime Minister Awas Yojana Scheme (PMAYS). There was to be some form of scrutiny for the purposes of eligibility. The eligible persons were to be given accommodation under this PMAYS. The Supreme Court made further directions in that regard.

4. In the present case, none of that seems to have been done. Notices have been issued for demolition but these do not point out any rehabilitation scheme nor any requirements of eligibility or how these are to be met or within what time. These are not even notices

under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971. They are simply eviction notices. It is even now unclear, whether Western Railways has taken up the matter of rehabilitation with Mumbai Metropolitan Region Development Authority (MMRDA), Respondent No. 7 to this Petition. This is of relevance because the Supreme Court order dated 16th December 2021, quoted above, makes reference to, a local government. This means a local government that has a rehabilitation scheme. Both sides seem to agree that in the present case, the expression local government must mean the MMRDA. We do not necessarily accept this as a limitation. It may well mean the Municipal Corporation of Greater Mumbai (“MCGM”) too. It is Respondent No.8 before us, and is represented by Ms Redkar.

5. Today, the MMRDA is not represented before us. We request the learned Advocate for the Petitioner to send the copy of the Petition and this order to Ms Kiran Bagalia who routinely appears for MMRDA and request her to take instructions so that further time is not lost.

6. We clarify that we have not indicated that MMRDA or MCGM are necessarily bound to rehabilitate those ousted in Western Railways Encroachment Removal Drives (“ERDs”).

7. We also seek information at this stage as to, whether Western Railways, MMRDA and MCGM have in place any rehabilitation policy or system, and what the eligibility criteria are. Throughout, we bear in mind that merely labelling these persons as

“encroachers” is not going to answer the problem. This is a serious problem in the city and it is a problem of human displacement. Sometimes, the scale of the displacement is beyond the imagination. It has to be addressed in a more considered fashion than by merely deploying bulldozers on the site.

8. We take on record a joint demolition report dated 7th February 2023 signed by various authorities that shows that about 101 structures were demolished. The report also says that the debris generated after demolition and unserviceable released material were broken and thrown outside the railway land at a low -lying area but no personal belongings were taken from the site.

9. While we note this report, the disposal of this material raises more questions than it answers, because by throwing this material into a low-lying area, apparently the presumption is that it will get washed into the Arabian Sea. We most emphatically do not approve of this approach. A copy of this joint demolition report is scanned and annexed to this order. The report does not indicate whether any survey was done of the 101 unauthorized structures. It does not indicate whether any process of eligibility was undertaken. In no sense is this in keeping with even the letter, let alone the spirit, of the Supreme Court orders referred to above.

10. No further demolitions are to be carried out until the next date in contravention of the Supreme Court order anywhere on Western Railway lands in Greater Mumbai.

11. List the matter on 1st March 2023.

12. It seems there is some anxiety expressed on behalf of railways regarding further demolition. Liberty to the learned Advocate for the Railways to mention the matter for an earlier date provided this is with notice to the Petitioners' advocate and the advocates for the other Respondents.

(Neela Gokhale, J)

(G. S. Patel, J)

WESTERN RAILWAY

No. SSE (W/Land) PL/1

Office of Senior Section Engineer
(W/Land) Santacruz
Mumbai

Date: 07/02/2023

To,
ADEN(Est/N) BVI
ADEN (W/S) BA ✓

JOINT DEMOLITION REPORT

With reference to above subject, it is reported that demolition/Joint fine patrolling was carried out on 7/2/23 at B.B.E. Location 14/5H-14/17B.(E) L.C. 99/3-18. About 12 nos of unauthorized hutments/structures encroachments were demolished and nos of person prosecuted. Complete debris so generated after demolition and unserviceable release materials were broken and thrown outside railway land at low lying area. No personal belongings were taken from the site.

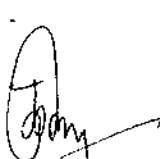
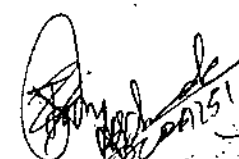
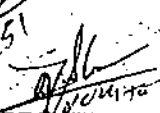
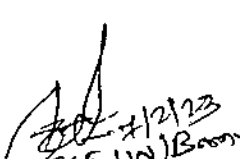
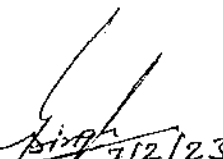
Details of Contractors.

- 1. Numbers of JCB : 2
- 2. Numbers of Truck : 01
- 3. Number of labours : 31
- 4. Other :

The following attended the programme:

- 1. SSE(W/L) STC: - 1
- 2. Custodian: SSE (W) 3 J.T.E. 1 SSE (P.WAY)
- 3. RPF/BA: IPF...1...SIPF...3... ASI...4... M/Con. 25 F/Con. 5
- 4. GRP/BA: Sr. PL 1 PL... PSL 1 API... M/Con. 15 F/Con. 7 Home Guard - 3
- 5. City police.....: Sr. PL 1 PL 2 API 1 M/Con. 24 F/Con. 3 Mobile 4
Nizmal PSI-3
Nagar SIB-BCT-1

Note-

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|  |  |  |  |  |
| RPF with Designation | City Police With Designation | GRP With Designation | Custodian With Designation | SSE (W/Land) STC |