



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.6821 OF 2022**

Shivmoori Jagatdev Kushwaha,  
Age 39, Partner of M/s. Stuti Enterprises  
Carrying on business at the Mumbai  
Chatrapathi Shivaji Terminus, Central  
Railway Employees Consumer  
Co-operative Society Limited,  
Ground Floor, CST, Mumbai – 400 001

... Petitioner

versus

1. Assistant Division Engineer,  
Divisional Railway Manager's  
Office, Central Railway, Mumbai CST
2. Estate Officer, Divisional Engineer,  
Central Railway Office of the Senior  
Divisional Engineer, Annexure  
Building, 3<sup>rd</sup> Floor,  
Mumbai – 400 001.
3. The Official Liquidator,  
The Mumbai Chattrapathi Shivaji  
Maharaj Terminals, Central Railway  
Employees Consumer Co-operative  
Society Limited, (under Liquidation),  
Ground Floor, Near to General  
Manager's Office, CST,  
Mumbai – 400 001

... Respondents

**WITH  
INTERIM APPLICATION NO.8021 OF 2024  
IN  
WRIT PETITION NO.6821 OF 2022**

Assistant Division Engineer  
Divisional Railway Manager's Office  
Central Railway, Mumbai CSMT

... Applicant

and  
Shivmoori Jagatdev Kushwaha,  
Age 39, Partner of M/s. Stuti Enterprises  
Carrying on business at the Mumbai  
Chatrapathi Shivaji Terminus, Central  
Railway Employees Consumer  
Co-operative Society Limited,  
Ground Floor, CST, Mumbai – 400 001 ... Petitioner

versus

1. Assistant Division Engineer,  
Divisional Railway Manager's  
Office, Central Railway, Mumbai CST
2. Estate Officer, Divisional Engineer,  
Central Railway Office of the Senior  
Divisional Engineer, Annexure  
Building, 3<sup>rd</sup> Floor,  
Mumbai – 400 001.
3. The Official Liquidator,  
The Mumbai Chattrapathi Shivaji  
Maharaj Terminals, Central Railway  
Employees Consumer Co-operative  
Society Limited, (under Liquidation),  
Ground Floor, Near to General  
Manager's Office, CST,  
Mumbai – 400 001 ... Respondents

**WITH  
WRIT PETITION NO.2215 OF 2024**

Union of India  
through Assistant Divisional Engineer,  
Divisional Railway Manager's Office,  
Central Railway, CSMT, Mumbai – 400 001 ... Petitioner

versus

1. The Liquidator,

Having his office at the Mumbai  
Chhatrapati Shivaji Maharaj Terminus  
Central Railway Employees Consumer  
Co-operative Society Ltd., General  
Manager Office, Ground Floor,  
CSMT Mumbai – 400 001.

2. Shivmoorat Jagatdev Kushwaha &  
Smt. Smita S. Kushwaha, Partners  
of M/s. Stuti Enterprises (Conductor  
of Business) Office at the Mumbai  
Chhatrapati Shivaji Maharaj Terminus,  
Central Railway Employees Consumer  
Co-operative Society Ltd., General  
Manager Office, Ground Floor,  
CSMT, Mumbai – 400 001.

Mr. V.Y.Sanglikar with Mr. Hetal Patel, Mr. Suraj Shetye, Mr. Hemanshu Vyas,  
Mr. Chetan Shah i/by Hetal Patel for Petitioner in WP No.6821 of 2022 and for  
Respondent No.2 in WP No.2215 of 2024.

Mr. R.V.Govilkar, Sr. Advocate with Mr. T.J.Pandian, Mr. Gautam Modanwal,  
Mr. Noor Jahan, Ms. Prajakta Joshi, Mr. Ankit Ojha i/by Mr. R.P.Ojha, for  
Respondent Nos.1 and 2 in WP No.6821 of 2022 and for Petitioner in WP  
No.2215 of 2024 and for Applicant in IA No.8021 of 2024.

**CORAM: N.J.JAMADAR, J.**

**RESERVED ON : 23 JUNE 2025**  
**PRONOUNCED ON : 20 AUGUST 2025**

**JUDGMENT :**

1. Rule. Rule made returnable forthwith, and with the consent of the parties, heard finally.
2. As these Petitions assail a common judgment and order dated 20 April 2022 passed by the Principal Judge, City Civil Court, they were heard together and are being decided by this common judgment.

**Writ Petition No.6821 of 2022**

3. By this Petition under Articles 226 and 227 of the Constitution of India, the Petitioner takes exception to the judgment and order passed in Misc. Appeal No.4 of 2019 by the learned Principal Judge, City Civil Court, Mumbai, whereby the appeal preferred by the Petitioner along with Misc. Appeal No.7 of 2019 preferred by the Liquidator – Mumbai CST Central Railway Employees Consumer Co-operative Society Limited (R3) came to be partly allowed to the extent of modification of the quantum of damages, while upholding the order of eviction passed by the Estate Officer (R2) directing the Petitioner and Liquidator (R3) to vacate the premises admeasuring 875 sq.ft. situated at Administrative Building, Central Railway, Mumbai (the subject premises).

4. Shorn of unnecessary details, the background facts leading to this Petition can be stated as under :

4.1 The Central Railway, Mumbai CSMT Central Consumers Co-operative Society Limited (the Society) is a consumer co-operative Society of the employees of the Central Railway. Central Railway (R1) allotted the subject premises to the Society in terms of the policy of the Central Government to allow the co-operative societies to operate on the railway premises. The Society was formed to run rail bazar and/or manufacture and sale consumer products, eatables/food articles in the railway precincts.

4.2 On 9 March 2009, the Society issued a tender notice inviting bids for running its business from the subject premises. As the Petitioner was a successful bidder, the Society entered into a Conducting Agreement with the Petitioner to run the Society's business from the subject premises for a term of five years commencing from 1 April 2009 to 31 March 2014 on certain terms and conditions, including a renewal clause.

4.3 As the society became financially unviable, the Deputy Registrar, Co-operative Societies, Mumbai, passed an order dated 20 December 2012 to wind up the affairs of the Society and appointed Liquidator (R3) to wind up the affairs of the society. The Liquidator terminated the Conducting Agreement executed by the Society in favour of the Petitioner. The latter invoked the arbitration and by an order dated 16 January 2014, Arbitration Petition No.947 of 2013 came to be disposed with a direction that the Petitioner shall take steps to get the arbitrator appointed, while allowing the Petitioner to continue to be in possession of the subject premises till 8 April 2014 only. Beyond the said date, the arbitration proceedings would continue only as regards the claim of damages made by the Petitioner against the society.

4.4 By an order dated 2 April 2014, the appeal preferred against the aforesaid order by the Petitioner came to be disposed with liberty to the Railways to take any steps or to adopt proceedings in accordance with law for the purpose of taking back the possession of the subject premises.

4.5 In the meanwhile, the Liquidator (R3) executed a Second Conducting Agreement with the Petitioner for a further term of five years i.e. 1 April 2014 to 31 March 2019.

4.6 On 18 November 2015, the Respondent No.1 issued notice to the Petitioner under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, (the Public Premises Act, 1971) calling upon the Petitioner to vacate the subject premises. It was followed by an application before the Estate Officer under the Public Premises Act, 1971 seeking eviction of the Petitioner from the subject premises. Eventually, by an order dated 17 November 2016, the Estate Officer directed the Petitioner to vacate the subject premises and to pay damages in the sum of Rs.74,57,694.56 to the Respondent No.1.

4.7 The Petitioner challenged the first order of Estate Officer dated 17 November 2016 before the learned Principal Judge, City Civil Court. By an order dated 17 January 2017, the said appeal i.e. Misc. Appeal No.9 of 2016 came to be allowed. Learned Principal Judge was of the view that, in the absence of the liquidator of the Society – original lessee, the proceedings initiated against the Petitioner – opponent No.2, were not tenable.

4.8 On 18 October 2017, the Respondent No.1 again issued a show cause notice calling upon the Petitioner and the Liquidator (R3) to show cause as to why they should not be evicted from the subject premises. Despite

appropriate reply dated 28 October 2017, the Respondent No.1 ordered the Estate Officer to initiate proceeding for eviction of the Petitioner and Liquidator (R3). A show cause notice was, thereafter, issued by the Estate Officer on 2 November 2017.

4.9 By a judgment and order dated 31 August 2018, the Estate Officer directed the Petitioner to vacate the subject premises opining, inter alia, that the subject premises were unauthorizedly sublet to the Petitioner and also that the subject premises was required for development of the area for the tourism purpose by the railway administration. The Estate Officer thus directed the Petitioner and Liquidator (R3) to vacate the subject premises within 15 days from the date of receipt of the said order and pay a sum of Rs.1,25,54,568/- towards damages.

4.10 Being aggrieved, the Petitioner filed Misc. Appeal No.4 of 2019, while the Liquidator (R3) filed Misc. Appeal No.7 of 2019.

4.11 By the impugned judgment and order dated 20 April 2022, the appellate authority was persuaded to dismiss the appeals holding, inter alia, that the Petitioner was unauthorized occupant and was liable to deliver clear and vacant possession of the subject premises.

4.12 Learned Principal Judge was, however, of the view that the determination of the damages by the Estate Officer was on a higher side and without considering the evidence of Mr. Hitendra K. Mehta, the valuer.

Consequently, the damages was directed to be paid at the rate of Rs.3,125/- p.m.

**Writ Petition No.2215 of 2024**

5. Being aggrieved by the aforesaid part of the impugned order to the extent it reduced the quantum of damages, the Union of India has preferred WP No.2215 of 2024.

6. It would be contextually relevant to note that the Liquidator (R3) had also filed Writ Petition being No.6798 of 2022. However, the Liquidator (R3) withdrew the said Petition, and, accordingly, only the challenge by the Petitioner to the order of eviction survives.

7. I have heard Mr. Sanglikar, learned Counsel for the Petitioner in WP No.6821 of 2022 and for Respondent No.2 in WP No.2215 of 2024 and Mr. Govilkar, learned Advocate for the Petitioner in WP No.2215 of 2024 and for Respondent Nos.1 and 2 in WP No.6821 of 2022, at some length. With the assistance of the learned Counsel for the parties, I have also perused the material on record.

8. Mr. Sanglikar, learned Counsel for the Petitioner, took a slew of exceptions to the impugned judgment and order passed by the Principal Judge, City Civil Court. Firstly, according to Mr. Sanglikar, the Estate Officer as well as the Appellate Authority committed manifest error in law in not deciding as to whether the subject premises is the public premises, and,



therefore, the jurisdictional condition for exercise of the powers under the Public Premises Act, 1971 was not fulfilled. Secondly, both the authorities proceeded on a completely incorrect premise that the subject premises has been allegedly sublet to the Petitioner. Thirdly, the show cause notice addressed by the Estate Officer was wholly defective. The order of eviction could not have been passed on the basis of such infirm and defective show cause notice. A composite show cause notice for recovery of possession and for damages is not legally tenable. The Estate Officer was enjoined to issue show cause notice in the prescribed Forms. Failure to do so, was fatal to the tenability of the proceeding for eviction under the Public Premises Act, 1971.

9. To this end, Mr. Sanglikar placed reliance on the decision of a learned Single Judge of this Court in the case of **Mine Manager, Manganese Ore (India) Ltd. and Anr. V/s. Shyam s/o Kunjilal Yadav**<sup>1</sup>. Reliance was also placed on a judgment of the learned Single Judge of the Delhi High Court in the case of **ANZ Grindlays Bank, Plc. V/s. Union of India and Ors.**<sup>2</sup>

10. To buttress the submission that the jurisdictional fact ought to have been decided by the Estate Officer, Mr. Sanglikar placed reliance on the judgment of the Supreme Court in the case of **Jagmittar Sain Bhagat and Ors. V/s. Director, Health Services, Haryana and Ors.**<sup>3</sup>

11. Thirdly and more importantly, Mr. Sanglikar would urge, the provisions

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1 2002(3) Mh.L.J. 917

2 2006(91) DRJ 453

3 (2013) 10 SCC 136

of the Public Premises Act, 1971 are not at all attracted to the subject premises as it is a Railways property. According to Mr. Sanglikar, the property of the railways is not covered under the definition of Public Premises as defined under Section 2(e) of the Act, 1971. This submission was not at all delved into by the authorities below. To lend support to this submission, Mr. Sanglikar placed a very strong reliance on the decision of the Uttarakhand High Court in the case of **Ravi Shankar Joshi V/s. Union of India and Ors.**<sup>4</sup>

12. Mr. Sanglikar would further urge that the decision making process was also infirm as Mr. R.K.Garg, who initially acted as the Estate Officer, was himself instrumental in initiating action against the Petitioner, in his capacity as the representative of the Railways administration. In such circumstances, the entire action stood vitiated. To draw home this point, Mr. Sanglikar placed reliance on a judgment of a learned Single Judge of this Court in the case of **Gajanan Shivram Lele V/s. Dena Bank and Anr.**<sup>5</sup>.

13. Per contra, Mr. Govilkar, learned Senior Advocate for Respondent Nos.1 and 2, would urge that the challenge to the impugned orders of eviction is wholly untenable, especially at the instance of the Petitioner when the Society has already withdrawn WP No.6798 of 2022. The Petitioner in WP No.6821 of 2022 has no independent right to occupy the subject premises. The term of 'conducting agreements', which were otherwise in breach of the

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4 WP(PIL) No.30 of 2022

5 2015(3) Mh.L.J. 735

terms and conditions of the grant of the premises to the Society, has expired long back. There is no semblance of right and interest in the Petitioner to hold on to the subject premises de hors the claim of the society. In the strict sense of the term, the Petitioner cannot be said to be in possession of the subject premises.

14. Mr. Govilkar urged with a degree of vehemence that, this Court has repetitively held that the agreement between the Petitioner and the Society did not bind the Railways and the latter was at liberty to initiate appropriate action to resume the possession of the subject premises. Mr. Govilkar took the Court through the orders passed by the Court in Arbitration Petition No.947 of 2013 dated 16 January 2014; by the Appeal Bench in Appeal (L) No.106 of 2014 in Arbitration Petition No.947 of 2013 on 2 April 2014, and on 22 April 2014 in Notice of Motion (L) No.868 of 2014 in Appeal No.106 of 2014, and Chamber Summons No.189 of 2019 in Execution Application (L) No.2081 of 2018 dated 1 April 2019, to bolster up the submission that this Court has consistently ruled that the agreement between the Petitioner and the Society and the consequent orders in the arbitration proceedings did not bind the Railways. Therefore, the endeavour of the Petitioner to perpetuate the unauthorized occupation by reference to such agreement and the orders passed in the arbitration proceedings behind back of the Railways, cannot be countenanced.

15. At any rate, the licence to conduct the business in the subject premises came to an end in the year 2019. If the Petitioner has any remedies qua the said Conducting Agreement, the Petitioner can enforce the same against the Society and not against the Railways with whom he had no privity of contract, much less, against the subject premises.

16. On the aspect of the legality and validity of the decision making process by the Estate Officer, Mr. Govilkar would urge, the technical objections now sought to be raised on behalf of the Petitioner that the notice was not served in the prescribed Form, the lease of the society was not terminated or that the determination was vitiated on account of the bias of Mr. R.K.Jain, do not deserve any consideration as the fact remains that the Petitioner had an efficacious opportunity of hearing before the Estate Officer, in as much as the Petitioner cross-examined the witnesses of the Railways and adduced evidence in his defence. At no point of time, any prejudice was pleaded by the Petitioner.

17. Mr. Govilkar would further submit that, in exercise of supervisory jurisdiction, it is the decision making process, which is required to be examined and not the merits of the decision. In the case at hand, the material on record would indicate that the Petitioner had an efficacious opportunity of hearing and there was no glaring procedural defect in the proceedings before the Estate Officer. Nor can it be urged that any fundamental right of the

Petitioner is violated. In these circumstances, Mr. Govilkar would urge, no interference is warranted in the impugned orders of eviction.

18. As regards the ground that the subject premises is not a 'public premises' within the meaning of Section 2(e) of the Public Premises Act, 1971, Mr. Govilkar submitted that the question whether the premises belonging to the Railways satisfies the definition of Public Premises, does not arise for determination as, in the instant case, the survey register indicates that the subject premises is a government land. Attention of the Court was invited to the copies of the survey register in respect of C.S.No.1454.

19. Mr. Govilkar placed reliance on a judgment of the Supreme Court in the case of **Naresh Kumar V/s. Addl. District Judge, Varanasi**<sup>6</sup>, wherein it was enunciated that, the Union of India has dominion over the property and if the said property had been entrusted to the Railway Club, it does not cease to belong to the Union of India, and, thus, the definition of Public Premises under Section 2(e) would apply to such property.

20. The aforesaid submissions now fall for consideration.

21. To begin with, it may be apposite to note the facts that bear upon the Petitioner's claim over the subject premises. Incontrovertibly, the subject premises was allotted to the Consumer Co-operative Society. The letter dated 15 February 2012 (page 302 – Vol. I) indicates that the society had

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6 AIR Online 1995 SC 812

accepted the allotment on the terms and conditions given in Annexure A appended thereto. It was provided that the Society shall not, inter alia, sublet the premises or activity therein to anybody, assign or sublet or transfer any interest in whole or in part of the licence. Any contravention thereof would entail the termination of the allotment without notice.

22. The subject premises was to be used for the following purposes :

- “5. The Society is permitted to use the premises for :
  - a. running a Consumer Co-operative store for sale of items such as foodstuff, clothes, grocery, general consumer merchandise, etc.
  - b. Selling ready to food items like, Vada Paav, Samosa, Kachori etc., subject to the condition that these items will not be cooked / prepared / manufactured in the premises.
  - c. dispensing tea/ coffee etc., through tea/coffee vending machines only.”

23. Clause 16 of the Terms and Conditions provided that no outsider would be allowed to act as a salesman / Manager and such arrangement shall be strictly prohibited.

24. Secondly, the claim of the Petitioner emanates from the Conducting Agreement dated 8 April 2009 executed by the Society in favour of the Petitioner. A bare perusal thereof make it abundantly clear that the Society and the Petitioner intended to execute only Conducting Agreement and not form any other jural relationship. Clause 22 of the said Conducting Agreement

explicitly provides that the possession and control of the entire premises shall always remain with the owner / registered society. Clause 23 makes the position even more clear by incorporating that the Conductor / Partnership firm' shall have no right, title or interest whatsoever in the subject premises or any portion thereof, and the Conductor shall only be entitled to have the use of the facilities as aforesaid. Clause 25 authorized the Society to terminate the Conducting Agreement after giving two months notice. Clause 32 further provided that, notwithstanding anything contained in the said Agreement, the said Agreement shall not to be the basis for claiming any relationship with the Society under the provisions of the Maharashtra Rent Control Act, 1999 as it was a temporary arrangement for conducting the business sanctioned by the Society for a temporary period.

25. The aforesaid nature of the jural relationship between the Petitioner and the Society, on the one hand, and the absence of privity of contract between the Petitioner and the Railway Administration, on the other hand, deserve to be kept in view while deciding the nature of the occupation of the Petitioner in the subject premises.

26. The manner in which this Court, albeit in the matters which arose out of the disputes between the Petitioner and the Society, dealt with the nature of the jural relationship between the Petitioner and the Railway Administration, though may not be decisive, yet assumes importance.

26.1 In the order dated 16 January 2014 passed in Arbitration Petition No.947 of 2013, this Court recorded that the agreement between the Petitioner and the Society did not bind the Railways. Therefore, even if the case of the Petitioner based on the Conducting Agreement was accepted, under the terms of the agreement, the Petitioner could not continue in possession beyond 8 April 2014. Thus, while reiterating that the Conducting Agreement was not binding on the Railways, it was directed that the Petitioner shall take steps to get an Arbitrator appointed and only on that condition, the Petitioner would continue to be in possession till 8 April 2014. Arbitration proceedings would, thereafter continue only as regards the claim for damages made by the Petitioner against the Society.

26.2 When the Petitioner challenged the said order in Appeal (L) No.106 of 2014, the Liquidator filed an affidavit stating that he intended to extend the Agreement in favour of the Petitioner by another term of five years. When the Railways raised an objection on the ground that the Liquidator was not entitled to do so, the Appellate Bench clarified that the Railways were always at liberty to take any steps or to adopt proceedings in accordance with law for the purpose of taking back possession of the subject premises.

26.3 Lastly, in Chamber Summons No.148 of 2019 in Execution Application (L) No.2081 of 2018, when directions were sought that the Officer of the High Court be directed to execute and admit the execution and also effect



registration of the Conducting Agreement on behalf of the Society, since Conducting Agreement had expired on 31 March 2019, this Court declined to accede to the said prayer recording, inter alia, that there was no direct privity of contract between the Railways and the Award.

27. The submissions sought to be canvassed by Mr. Sanglikar touching upon the breach of the provisions contained in the Public Premises Act 1971 and the Rules framed thereunder, the defect in the notices issued by the Railways and the Estate Officer before the commencement of the proceedings, and the vitiation of the proceeding on account of bias, are required to be appreciated keeping in view the aforesaid status of the Petitioner qua subject premises and the nature of his claim.

28. On first principles, if the Petitioner has no right to assert possession over the subject premises, de hors the concession given by the society to conduct the business which the society was entitled to carry on under the terms of the allotment by the Railways, and, thus, no independent right and interest to hold on to the premises, it becomes debatable where the Petitioner can mount the aforesaid challenge to the order of eviction especially when the challenge by the society thereto came to be withdrawn.

29. Nonetheless, this Court considers it appropriate to briefly delve into the aforesaid grounds of exception to the impugned order, assiduously canvassed by Mr. Sanglikar. An effort was made by Mr. Sanglikar to draw home the point

that the allotment in favour of the society was not lawfully terminated. Attention of the Court was invited to an admission in the cross-examination of PW-1 that the Railways had not issued a termination notice as such. Taking the Court through the contents of the notice dated 18<sup>th</sup> October 2017, styled as departmental show cause notice, Mr. Sanglikar, would urge that the said notice can never be construed to be a termination notice.

30. The learned Principal Judge was not persuaded to accede to the aforesaid submission. The learned Principal Judge was of the view that a notice of termination need not be construed very strictly. This view of the learned Principal Judge is legally impeccable. It is well-recognized the title or nomenclature of a document is not of decisive significance. If the notice dated 18<sup>th</sup> October 2017 is read as a whole, it becomes abundantly clear that the Railways had called upon the society as well as the Petitioner to vacate the subject premises. The notice refers to the acts of commission and omission on the part of the society in breach of the terms and conditions of allotment. The society was specifically informed that the society had entered into the Conducting Agreement with the Petitioner in breach of the terms and conditions of the allotment of the subject premises and without the consent and knowledge of the Railways. Qua the Petitioner, it was categorically stated that the Petitioner (Noticee No.2) had no legitimate right to continue to occupy the Railways property. The occupation of the Petitioner was wholly

unauthorized. The society and the Petitioner were put to notice that they were liable to be evicted under the Public Premises Act 1971.

31. If the notice dated 18<sup>th</sup> October 2017 is read as a whole, it becomes abundantly clear that the Railways has adverted to all the material facts, including the breach on the part of the society and the nature of the occupation of the Petitioner, the cause which constrained the Railways to seek vacant possession of the subject premises. Therefore, the submission on behalf of the Petitioner that there was no lawful termination of allotment does not carry any substance.

32. Mr. Sanglikar then urged that the Estate Officer had mechanically issued the notice dated 2<sup>nd</sup> November 2017 without application of mind. It was submitted that the Estate Officer was enjoined to first satisfy himself that the noticee was in unauthorized occupation of the public premises and that he was required to be evicted therefrom. The material on record, according to Mr. Sanglikar, does not indicate that the Estate Officer had recorded such satisfaction before the notice dated 2<sup>nd</sup> November 2017 came to be issued under Section 4 r. w. Section 7 of the Public Premises Act 1971.

**33.** In order to lend support to the aforesaid submission, Mr Sanglikar placed a strong reliance on a judgment of this Court in the case of **Minoo Framroze Balsara Vs The Union of India & Ors.**<sup>7</sup>

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7 AIR 1992 Bom 375.

34. In the case of **Minoo Framroze Balsara (supra)**, after analyzing the provisions of the Public Premises Act 1971, this Court held, *inter alia*, that Section 4 prescribes that the unauthorized occupant must be issued with notice in writing to show cause why an order of eviction should not be passed against him. That notice has to be issued by the Estate Officer provided he is of the opinion that the addressee of the notice is in unauthorized occupation of public premises and that he should be evicted. Prima facie satisfaction of the Estate Officer is a sine qua non of the issuance of the show cause notice. The prima facie satisfaction must be two fold; first, that the addressee is in unauthorized occupation of public premises, and, secondly, that, he should be evicted. The notice must set out the grounds on which the order of eviction is proposed to be made. It must, therefore, state not only why the addressee is thought to be in an unauthorized occupation but also why it is thought that he should be evicted. It must inform the addressee that he is entitled to show cause against the proposed order of eviction. The addressee cannot effectively show cause unless he knows why the Estate Officer is of the opinion that he is in unauthorized occupation. He also cannot show effective cause unless he knows why his eviction is proposed.

35. The aforesaid enunciation elucidates the purpose of the notice under Section 4 of the Public Premises Act 1971. It emphasizes that, issuance of a notice under Section 4 is not an empty formality. The noticee must be

informed of the grounds which the Estate Officer considers sufficient to warrant the eviction of the noticee from the public premises. Sub-Section (2) of Section 4 expressly mandates that the notice shall specify the grounds on which the order of eviction is proposed to be made.

36. Thus there can be no quarrel with the aforesaid proposition. In the facts of the case, however, it cannot be said that the show cause notice dated 2<sup>nd</sup> November 2017 was defective and infirm. The show cause notice refers to the notice dated 18<sup>th</sup> October 2017 issued by the Railways and the reasons which rendered the occupation of the premises by the Petitioner unauthorized and also the grounds on which the Petitioner was proposed to be evicted.

37. If the show cause notice dated 2<sup>nd</sup> November 2017, is read in conjunction with the notice dated 18<sup>th</sup> October 2017, addressed by the Railways, it cannot be said that the Estate Officer had not recorded the subjective satisfaction that the Petitioner was in unauthorized occupation and thus, notice was required to be issued under Section 4 of the Public Premises Act 1971 to the society and the Petitioner. Nor can it be said that the Petitioner was prejudiced in his defence as the said notice did not equip him to show cause to the proposed action of eviction.

38. Mr. Sanglikar next urged that the aforesaid show cause was addressed by RK Jain, Estate Officer-Divisional Engineer, CST, Mumbai. Since RK Jain had earlier taken part in the process to seek the permission of the Registrar to

proceed against the Liquidator and in initiating the action under the Public Premises Act 1971, the entire action was vitiated on account of official bias.

39. Mr. Sanglikar, placed reliance on a judgment of this Court in the case of **Gajanan Shivram Lele (Supra)**. In the said case, the Petitioners therein had invoked the writ jurisdiction of this Court as the Estate Officer, Respondent No.2 therein, before whom the proceedings under the Public Premises Act 1971 were pending, had himself recommended the action of eviction against the Petitioners. In that context, this Court held that since the Respondent No.2 therein, had himself already done some act or taken decision in the matter concerned, the apprehension expressed by the Petitioners that the Respondent No.2 may be interested in supporting his act or decision in the matter concerned, cannot, in the facts and circumstances of the said case, be described as some unreasonable apprehension.

40. I am afraid the aforesaid decision is of any assistance to the Petitioner. The material on record indicates that the Petitioner had filed an Application dated 4<sup>th</sup> December 2017 seeking recusal of RK Jain from the eviction proceedings and, thereupon, on 11<sup>th</sup> January 2018, RK Jain, recused himself from the said proceedings and another Estate Officer came to be appointed. Thereafter, all the parties, including the Petitioner, were provided an effective opportunity of hearing by the successor Estate Officer.

41. In this view of the matter, the broad submission of Mr. Sanglikar that the proceeding was totally vitiated on account of the official bias of RK Jain does not merit acceptance unreservedly. By no stretch of imagination, can it be said that the Petitioner and the society did not get an effective opportunity of hearing. Therefore, the challenge to the order passed by the Estate Officer on the count of bias also falls through.

42. Mr. Sanglikar further urged that the show cause notice was not issued in accordance with the provisions of the Public Premises Act 1971 and the Rules framed thereunder. Firstly a composite show cause notice under Section 4 and Section 7 of the Public Premises Act 1971 was infirm.

43. Amplifying the submission, Mr. Sanglikar would urge that under Rule 3 of the Public Premises (Eviction of Unauthorised Occupants) Rules, 1971, a notice or order under the Public Premises Act 1971 shall be in one of the appropriate forms appended to those Rules. The form of notice under Section 4 of the Public Premises Act 1971, is prescribed in Form-A. Whereas the form of notice under Section 7 of the Public Premises Act 1971 is prescribed in Form-D. Therefore, a composite notice under Section 4(2) and 7 of the Public Premises Act 1971 was not in consonance with the provisions of the Public Premises Act 1971 and the Public Premises Rules 1971.

**44.** A proper show cause notice is indispensable to sustain an action of eviction under the Public Premises Act 1971. To buttress this submission, Mr.

Sanglikar placed reliance on a judgment of this Court in the case of **Shyam Kunjilal Yadav (Supra)**.

45. In the case case of **Shyam Kunjilal Yadav (supra)**, the show cause notice proceeded on the premise that the Respondent therein had ceased to be in the employment of the Appellant 25 years ago and was thus in unauthorized occupation of the public premises. It, however, emerged that neither the Respondent nor his father nor any member of the family had been in the service either of the Appellant or the predecessor in interest of the Appellant.

46. In that context, this Court observed that the issuance of a proper notice to show cause is a mandatory requirement of the statute. The show cause notice was fundamentally flawed in the said case and the eviction proceedings, was, therefore, liable to be quashed and set aside on the aforesaid ground.

47. There can be no duality of opinion that a proper and valid show cause notice in conformity with the statutory requirement must precede the action of eviction. However, the aforesaid decision does not advance the cause of the submission on behalf of the Petitioner. As noted above, the intrinsic evidence of the notice dated 2<sup>nd</sup> November 2017, coupled with the notice issued by the Railways on 18<sup>th</sup> October 2017, gave a fair and complete indication of the



reasons which weighed the Estate Officer to initiate the action for eviction against the Petitioner.

48. In the totality of the circumstances, the fact that a notice was issued to the Petitioner under the provisions contained in Section 4(2) and Section 7 of the Public Premises Act 1971 does not detract materially from the legality and validity of the said notice.

49. Mr. Sanglikar would urge that the Estate Officer did not at all advert to the question whether the subject premises falls within the definition of Public Premises under Section 2(e) of the Public Premises Act, 1971. Inviting attention of the Court to the issues settled by the Estate Officer, Mr. Sanglikar would submit the order passed by the Estate Officer suffers from the vice of the non-consideration of the most relevant issue, namely, whether the subject premises constituted a public premises. It is only when the premises satisfies the definition of public premises under Section 2(e), the Estate Officer gets jurisdiction. Therefore, it was incumbent upon the Estate Officer to frame and decide the said issue.

50. To this end, Mr. Sanglikar placed reliance on the judgment of a learned Single Judge of the Delhi High Court in the case of **ANZ Grindlays Bank, Plc. V/s. Union of India and Ors. (supra)**, wherein it was enunciated that to invoke the provisions of the Public Premises Act, 1971, it should be shown that the property in question falls within the term of the public premises under

the Act, 1971, and the Petitioner is in unauthorized occupation of the same, and, unless that is done, the Estate Officer cannot assume jurisdiction and proceed to make orders.

51. Reliance was also placed on the judgment of the Supreme Court in the case of **Carona Ltd. V/s. Parvathy Swaminathan and Sons**<sup>8</sup> wherein the import of “jurisdictional fact” was expounded. The observations of the Supreme Court in paragraphs 27 and 28 read as under :

“27. Stated simply, the fact or facts upon which the jurisdiction of a Court, a Tribunal or an Authority depends can be said to be a 'jurisdictional fact'. If the jurisdictional fact exists, a Court, Tribunal or Authority has jurisdiction to decide other issues. If such fact does not exist, a Court, Tribunal or Authority cannot act. It is also well settled that a Court or a Tribunal cannot wrongly assume existence of jurisdictional fact and proceed to decide a matter. The underlying principle is that by erroneously assuming existence of a jurisdictional fact, a subordinate Court or an inferior Tribunal cannot confer upon itself jurisdiction which it otherwise does not possess.

28. In Halsbury's Laws of England, (4th Edn.), Vol.1, para 55, p.61; Reissue, Vol.1(1), para 68, pp.114- 15, it has been stated:

“Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of the issue. If, at the inception of an inquiry by

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an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive".

The existence of a jurisdictional fact is thus a sine qua non or condition precedent to the assumption of jurisdiction by a Court or Tribunal." (emphasis supplied)

52. Mr. Sanglikar also banked upon the enunciation of law in the case of **Jagmittar Sain Bhagat and Ors. V/s. Director, Health Services, Haryana and Ors. (supra)**, wherein the Supreme Court postulated that the conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties or by a superior court and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. If the Court / Tribunal inherently lacks jurisdiction, the acquiescence of party equally not be permitted to perpetrate and perpetuate defeating the legislative animation. The Court cannot derive jurisdiction apart from the statute.

53. Lastly, Mr. Sanglikar placed a very strong reliance on the decision of the Uttarakhand High Court in the case of **Ravi Shankar Joshi V/s. Union of India and Ors.(supra)**, to draw support to the submission that the Public Premises Act, 1971 will not apply to the property belonging to the Railways. In the said case, after advertng to the definition of the Public Premises under

Section 2(e), the Uttarakhand High Court held that the Public Premises Act, 1971 will not be applicable to the properties which belong to the Railways, as they would not be falling within any of the clauses of the definition of the Public Premises. The Uttarakhand High Court was of the view that the Railways have been independently dealt with under List I Entry No.22 of Seventh Schedule to the Constitution. Being an independent body, directly under the control of the Government of India, the Railways is neither the local body nor the public corporation covered by the definition under Section 2(e) of the Public Premises Act, 1971.

54. In contrast to this, Mr. Govilkar would urge that, in the facts of the case at hand, the question of the subject premises not being a public premises does not arise. Inviting attention of the Court to the survey register, Mr. Govilkar would urge, the land on which the subject premises is situated is the government land. The beneficial ownership of the property bearing C.S.No.1454 is shown to vest with the Railways. Therefore, the primary character of the property as the property of the Central Government does not change.

55. Mr. Govilkar would further submit that the issue of the Railways property being the public premises is no longer *res integra*. Reliance was placed on the judgment of the Supreme Court in the case of **Naresh Kumar V/s. Addl. District Judge, Varanasi (supra)**.

56. For the applicability of the Public Premises Act, 1971, the premises in question must indubitably fall within the ambit of 'public premises' as defined under Section 2(e) of the Public Premises Act, 1971. Undoubtedly, the existence of public premises is the jurisdictional fact. The provisions under the Public Premises Act, 1971 can be invoked only when the premises falls within the definition of 'public premises'. To the aforesaid extent, the submissions of Mr. Sanglikar merit acceptance.

57. But the abstract submission of Mr. Sanglikar that the provisions of the Public Premises Act, 1971, do not apply to the Railway premises cannot be accepted. That question would be required to be answered in the backdrop of the facts of the given case. If there is material to indicate that the property in question, belongs to the Government, the primary requirement stands satisfied even if the Railways exercises possessory control and dominion over such property. The expression "belonging to" is wider in connotation than ownership. In the case at hand, as noted above, the survey register indicates that the property is the government land.

58. At this juncture, reference to the judgment of the Supreme Court in the case of **Naresh Kumar V/s. Addl. District Judge, Varanasi (supra)**, would be apposite. In that case, the Union of India (Eastern Railways) owned a cinema building. The management of the club building including an Auditorium and machinery etc., had been entrusted by the Eastern Railways

Administration to the Railway Cinema Club. The Auditorium of Railway cinema was hired by the Appellant therein for a period of five years for screening feature films.

59. When the Estate Officer, Eastern Railways, initiated proceedings for the eviction of the Appellant, on expiry of the contract period, it was, inter alia, contended that under Section 2(e) of the Public Premises Act, 1971, the words 'belonging to' should mean the Central Government must have control over the property. Where the Railway Administration had handed over the property to the Railway Cinema Club, which had, in turn, licenced the Auditorium to the Appellant, it cannot be said that the Government of India (Railway Administration) had control over the property.

60. Repelling the submissions, the Supreme Court held as under :

“5.....If admittedly the property belongs to the Union of India, the Railway Cinema Club had been entrusted with the running of the cinema house together with the equipments. It found its running was not a profitable venture. Therefore, by inviting tenders, the offer of the appellant came to be accepted and that was how he became the licensee for a period of five years from 1982 from the Railway Club. After the expiry of the period, the estate officer invoked the provisions of the Act for evicting the appellant. We are clearly of the view that merely because the Railway Club invited tenders the property did not cease to belong to the Union of India (the Eastern Railway Department). It still had dominion over the property. Advisedly under Section 2(e)

Parliament has used the words “belonging to” and not ownership. If, therefore, the Union of India has dominion over the property and if the said property had been entrusted to the Railway Club, by such mere entrustment it does not cease to belong to the Union of India. Therefore, the definition under Section 2(e) will apply.”

(emphasis supplied)

61. The aforesaid enunciation of law appears to be on all four with the facts of the case at hand. In the case at hand as well, the entrustment by the Railways of the subject premises was to a consumer society which had, in turn, entrusted the business therein to the Petitioner under a Conducting Agreement. The Railway administration, thus, exercised dominion over the subject premises. In this view of the matter, I find it difficult to accede to the submission of Mr. Sanglikar that the Estate Officer exercised jurisdiction not vested in him by law.

62. The conspectus of aforesaid consideration is that, none of the grounds canvassed by Mr. Sanglikar are worthy of acceptance. Moreover, having regard to the nature of the claim of the Petitioner, especially after the expiry of the term of the second Conducting Agreement as well, the Petitioner cannot be permitted to agitate the aforesaid grounds which the Society could have legitimately urged. Writ Petition No.6821 of 2022, therefore, fails.

**Writ Petition No.2215 of 2024 :**

63. The Railway administration is aggrieved by the impugned order which modifies the quantum of damages. Learned Principal Judge, City Civil Court, has evaluated the valuation reports pressed into service by the Railway administration, the Society and the Petitioner in WP No.6821 of 2022. Learned Principal Judge on a careful evaluation of each of the valuation reports found that the evidence of Mr. Hitendra K. Mehta, valuer appointed by the Society (Opponent No.1), appeared worthy of acceptance as Mr. Mehta had prepared the valuation report after considering all the relevant factors, including the condition of the premises, its location and the availability of the amenities. In contrast, the reports of other valuers were on the basis of the ready-reckoner and market rental of commercial premises.

64. In the backdrop of the aforesaid assessment of the valuation reports by the learned Principal Judge, this Court in exercise of writ jurisdiction does not find it expedient to interfere with such appreciation, which is essentially rooted in facts. Moreover, in view of the settlement arrived at between the Railway Administration and the Society, inter alia, that the Railway administration shall abide by the impugned order, as amended by the order dated 4 May 2022, in regard to the levy of damages, pursuant to which, the Society has withdrawn the challenge to the impugned order, the issue of quantum of damages need not be again opened and determined by this Court in exercise of the extra-



ordinary writ jurisdiction. Thus, Writ Petition No.2215 of 2024 also deserves to be dismissed.

65. Hence, the following order :

**ORDER**

(i) Writ Petition No.6821 of 2022 stands dismissed.

(ii) In view of dismissal of Writ Petition No.6821 of 2022, IA No.8021 of 2024 stands disposed.

(iii) Writ Petition No.2215 of 2024 also stands dismissed.

(iv) Rule discharged.

(v) No costs.

**( N.J.JAMADAR, J. )**

66. At this stage, Mr. Sanglikar, the learned Counsel for the petitioner, in WP No.6821 of 2022, seeks continuation of the interim relief.

67. Mr. Gowilkar, the learned Senior Advocate for the respondent – Union of India, opposes the prayer.

68. Since the interim relief is in operation, it shall continue for a period of four weeks upon the petitioner furnishing an undertaking not to part with the possession of the subject premises and otherwise create any third party interest in the subject premises, within one week from today.

**( N.J.JAMADAR, J. )**