**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

**WRIT PETITION NO. 2519/2024
WITH
WRIT PETITION NO. 2491/2024
AND
WRIT PETITION NO. 2572/2024**

WRIT PETITION NO. 2519/2024

Anil s/o Shamrao Satpute,
Aged about 55 years, Occ- Business,
R/o Santoshi Mata Ward, Ballarpur,
Tahsil & District- Chandrapur.

.... **PETITIONER(S)**

// VERSUS //

(1) **Union of India**
through Divisional Railway Manager,
DRM Office, Central Avenue, Mohan
Nagar, Nagpur.

(2) **The Estate Officer**,
Senior Board Engineer (South),
Central Railway Board,
Railway Manager Office, Engineering Branch,
Tahsil & District-Nagpur.

.... **RESPONDENT(S)**

WITH

WRIT PETITION NO. 2491/2024

Shri Abdul Rafique S/o Sheikh Amir,
Aged about 55 years, Occ.- Business,
R/o. Shop No. 7, Allapalli Road,
Ballarshah, Tah. Ballarshah,
Dist. Chandrpur.

.... **PETITIONER(S)**

// VERSUS //

The Estate Officer,
1st Floor, Divisional Manager Office,
Central Railway, Kingsway, Nagpur
Tah. & District Nagpur

.... **RESPONDENT(S)**

WITH

WRIT PETITION NO. 2572/2024

Avtarsingh Mahendrasing Digwa,
Aged about 58 years, having the place of
business, Shop No. 41 situated at
Ballarpur- Allapalli main Road, Opposite
of Ballarpur Post Office, Ballarpur,
Dist. Chandrapur

.... **PETITIONER(S)**

// VERSUS //

(1) **Union of India (Central Railway)**
through its D.R.M., Central Railway Mandal,
Railway Manager Office, Nagpur,
Tah. and Dist. Nagpur.

(2) **Senior Mandal Engineer (South)**
Central Railway Mandal,
Railway Prabhandak Office, Engineer Branch,
Nagpur, Tah. and Dist. Nagpur

(3) **Assistant Mandal Engineer**,
Central Railways, Ballarpur Railway Station,
Ballarpur, Tal. Ballarpur, Dist. Chandrapur.

.... **RESPONDENT(S)**

∞∞

S/Shri Madhur A. Deo, N.A. Chawhan, Y.A. Kullarwar,
Advocates for the Petitioners in respective Petitions
Shri N.S. Deshpande, DSGI for the Respondent – Union of India

∞∞

CORAM : M.S. JAWALKAR, J.

CLOSED FOR JUDGMENT ON :- JANUARY 16, 2025
JUDGMENT PRONOUNCED ON :- JANUARY 27, 2025

JUDGMENT:-

(1) Since the issue involved in all the Petitions is similar, they are being disposed of by this common judgment. **RULE**. Rule made returnable forthwith. Heard finally by consent of learned Counsel for the respective parties.

(2) Since the Writ Petition No. 2519/2024 is taken as lead Petition, the facts and contentions of the said Writ Petition are considered for adjudication of the issue involved in all the Petitions.

(3) The present Petition is filed by the Petitioner challenging the order dated 30/03/2024 passed by the learned Principal District & Sessions Judge, Chandrapur, thereby rejecting the Application for grant of stay filed by the Petitioner in Misc. Civil Appeal No. 51/2023 to the order dated 28/07/2023 passed by the Respondent - Estate Officer, whereby the Respondent -

Estate Officer has directed the Petitioner to vacate the shop premises in question.

(4) The facts giving rise for filing of the present Writ Petition are as under:-

(5) Shop No. 36 situated in the Complex of Ballarpur Railway Station belongs to the Respondent – Union of India. The said shop was let out by the Respondent – Union of India to Shahiraj Alone for running his Xerox Centre. A Lease Deed was executed in favour of Shahiraj Alone, which was subsequently revised on 20/01/1993. The said Shahiraj Alone entered into partnership with one Namdeo Lokhande for running the business at the said shop. Shahiraj Alone and Namdeo Lokhande ended the said partnership vide agreement dated 08/09/1988. Under the said agreement, Shahiraj Alone permitted Namdeo Lokhande for running business in the said shop. Thereafter, Shahiraj Alone retired from the said partnership. Namdeo Lokhande was occupying the said shop premises and was running the business of Xerox Centre. Thereafter, Namdeo Lokhande inducted the Petitioner's father,

namely Shamrao Satpute, as a Partner and accordingly, a Partnership Deed dated 16/09/1991 was executed between them. Namdeo Lokhande retired and the Petitioner's father Shamrao Satpute was running the business of xerox and computer from the said shop premises. For more than 30 years, the father of the Petitioner, and thereafter, the Petitioner himself has been running the business from the said shop premises.

(6) It is submitted that since the Lease Deed was not in the name of Petitioner, but was in the name of Shahiraj Alone, the Petitioner issued a letter dated 14/07/2005 to the Respondent No. 1 – Union of India requesting for execution of Lease Deed in his favour. In response to the said letter, the Respondent – Union of India issued a letter dated 28/10/2005 expressing its willingness to execute the Lease Deed in favour of the Petitioner. According to the Petitioner, the Petitioner has been in occupation of the shop premises for last more than 30 years and has been paying rent to the Respondent – Union of India, so also paying taxes to the Nagar Parishad, Ballarpur regularly. The Petitioner paid rent by issuing account payee cheques in

the name of Respondent – Union of India. The said cheque's were encashed by the said Respondent without any demur.

(7) In the year 2021, Shahiraj Alone, who was the original lessee, passed away. His son, namely Kamal Shahiraj Alone, approached the Petitioner and asked him to vacate the shop premises. The Petitioner refused stating that he has been in occupation of the shop premises for last more than 30 years. Thereupon, Kamal Shahiraj Alone threatened the Petitioner to vacate the suit premises, failing which he would lodge a Complaint with the Respondent – Union of India for eviction of the Petitioner on the ground of unauthorized occupation. The Petitioner moved another Application dated 29/12/2021 to the Respondent – Union of India requesting to execute the Lease Deed in his favour. In response to the said Application, the Respondent – Union of India issued reply dated 31/01/2022 stating that the Petitioner is in unauthorized occupation of the shop premises in question and no Lease-Deed has been executed in his favour. In response to the same, the Petitioner submitted his reply stating that since he is in occupation of the said premises for last more than 30 years, the Lease-Deed

should be executed in his favour. Thereafter, the Respondent – Union of India issued a letter dated 09/05/2022 asking the Petitioner to vacate the shop premises within a period of 15 days. Thereafter, the Petitioner filed the Regular Civil Suit No. 155/2022 before the learned Civil Judge, Junior Division, Chandrapur challenging notice dated 09/05/2022. The said Suit is pending.

(8) On 11/04/2023, the Respondent - Estate Officer issued show cause notice under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as "the said Act") calling upon the Petitioner as to why an order of eviction should not be made against him. The Petitioner filed his reply to the said Show Cause Notice. The Respondent – Estate Officer, by the order dated 28/07/2023, directed the Petitioner to vacate suit shop within 15 days. Being aggrieved by the said order, the Petitioner filed Misc. Civil Appeal No. 51/2023 under Section 9 of the said Act before the learned Principal District & Sessions Judge, Chandrapur. Alongwith the said Appeal, the Petitioner also filed Application for grant of stay to the order dated 28/07/2023. The

Respondent – Estate Officer filed reply to the said Application for grant of stay. Learned Appellate Court, by the order dated 27/02/2024, directed the parties to maintain status-quo and by the order dated 30/03/2024, the learned Appellate Court rejected the Application filed by the Petitioner for grant of stay. The aforesaid order dated 30/03/2024 is the subject matter of challenge in the present Writ petition.

(9) Learned Counsel for the Petitioner contended that the learned Appellate Court failed to consider that the Petitioner has filed a statutory Appeal challenging the order passed by the Respondent - Estate Officer. It is well settled law that a statutory Appeal which is in the nature of First Appeal is a valuable right of a litigant. The duty of the First Appellate Court is to re-appreciate all the facts and to arrive at an independent conclusion as to whether the order passed in Original Proceedings are correct or not. By rejecting the Application for grant of stay, the learned Appellate Court has made the Petitioner susceptible of being dispossessed from the property in question. In case, the Petitioner is evicted from the shop premises pending the disposal of the Appeal, it would

render the Appeal infructuous. This would frustrate the very object of providing a statutory Appeal to a litigant, which, as stated above, is his valuable right. The impugned order is thus unsustainable in the eyes of law and is liable to be quashed and set aside.

(10) Learned Counsel for the Petitioners, in support of their contentions, relied on following citations:

(a) Life Insurance Corporation of India and another vs. National Insurance Company Ltd. And ors., 2023 (6) Bom. C.R. 422;

(b) M/s. Dwarkadas Marfatia and sons vs. Board of Trustees of the Port of Bombay, (1989) 3 SCC 293; and

(c) **Mahabir Auto Stores and others vs. Indian Oil Corporation and others, (1990) 3 SCC 752.**

(11) *Per contra*, learned DSGI for the Respondent – Union of India contended that the Railway Administration has issued show cause notices to the Petitioner, original Lease Holder on 22/06/2022. Agreement between the Lease Holder has been terminated on 14/07/2022. Estate Officer is the proper

authority to take decision on the railway property under the said Act. The said terms and conditions are mentioned in the Lease Agreement. The Railway Officers' have conducted an enquiry on visiting the particular shops and on the basis of this, action is taken against the illegal occupiers. It is submitted that the Railway Administration requires these shops for station colony redevelopment and renovation of station area and the Petitioner is obstructing in the work of station development. As per the terms and conditions of the agreement, subletting land to other is violation of the terms and conditions and the lease is liable to be terminated, hence, the Respondent has rightly terminated the agreement and initiated the Proceedings against the Petitioner under the said Act.

(12) Heard learned Counsel for the respective parties. Perused the documents, impugned orders and considered the citations relied on by the learned Counsel for the Petitioners.

(13) There is no dispute over the fact that all the Petitioners are holding the possession of the shops mentioned in the

respective Petitions. It is also a matter of fact the Petitioners were not the original allottees. In the year 2005, the present Petitioner made a request to the Union of India to execute the Lease-Deed in his favour. In response to the said letter, the Ministry of Railways agreed to execute the Lease-Deed subject to the conditions mentioned therein. The new Lease-Deed would be valid for another five years. It is the contention of the Petitioner that though he has shown his willingness to abide by the said conditions, no Lease-Deed was executed in his favour.

(14) In Writ Petition No. 2572/2024, the Petitioner has placed on record a letter by the Railway Land Lessee and Traders Co-operative Society, through its President, giving details of the original Licensees, existing SOC Member Licensees, existing firm names and plot numbers. The names of the Petitioners are appearing at Serial Nos. 10, 40 and 52. The said Application was made for transfer of the lease. It needs to be noted that on 26/07/2004, the Ministry of Railways informed to the General Manager that in terms of the Board's letter, the Board has allowed, as a one time exception, transfer of License in case where the plot holders have been running the business on

behalf of original Licensee on Power of Attorney. Some Zonal Railways have brought out that, in many cases, the Power of Attorney is not from the original Licensee resulting in difficulty in implementation of the Board's letter under reference. The communication further states that considering the magnitude of the problem and huge revenue loss to Railway, in partial modification of Board's letter of even number dated 25/06/2008, it has been decided to permit one time liberty for change of name of allottees regardless of whether they are the legal heirs or not of the original allottees. It is further mentioned that the said request will be subject to the payment of outstanding amount by the party with 7% simple interest and levy of a conversion change (i.e. change of name of the Licensee) equivalent to one year License fee. The period of Licensing would be five years. After five years, all shops shall be auctioned afresh and allotted to highest bidder duly giving first right of refusal to the present occupant. Modalities of security deposit, need of collecting upfront etc. can be worked out by the Railway with concurrence of Associate Finance, keeping in mind the local condition. In view of such directions, letter by the Traders Association was filed.

(15) It is the contention of the Petitioner that the Show Cause Notice issued on 31/01/2022 is against the policy of the Railway Ministry. Moreover, there is a subjective satisfaction by the Authority as required by Section 4 and 5 of the said Act. There has to be a subjective satisfaction to the fact that the occupant is an unauthorized occupant and his eviction is required. There has to be a reasoned order which reflects the subjective satisfaction of the Estate Officer that the public premises is unauthorizedly occupied and it needs to be vacated. It is contended that since more than 30 years, the Petitioner is occupying the said shop in question and the Railways having due knowledge of it, the Petitioner has twice applied for execution of the Lease-Deed. The Application dated 29/12/2021 is filed before issuance of the Show Cause Notice.

(16) Learned Counsel for the Petitioners relied on **Life Insurance Corporation of India (supra)** wherein it is held that public bodies will not act as private landlords and that their actions will be governed by the concept of fairness. In the said judgment, this Court relied on **Indian Bank Ltd vs M/s Blaze and Central (P) Ltd. [AIR 1986 Kar 258]** wherein

Karnataka High Court held that, *"the only point of enquiry under Section 5 of PPE Act was whether or not a person was an unauthorised occupant of public premises and nothing more. This Court held that Section 4 and Section 5 are to be read together and harmoniously and even if the Estate Officer is satisfied that the public premises are in unauthorised occupation, he is not obliged to make an order of eviction unless he is satisfied that the person in unauthorised occupation should be evicted. Unless the grounds are stated, the noticee will not be able to show cause as to why his occupation has been construed as unauthorised occupation and why he is required to be evicted."*

(17) In **Life Insurance Corporation of India (supra),** this Court, after endorsing the view taken in **Ashoka Marketing Ltd. & another vs. Punjab National bank & others, (1990) 4 SCC 406,** held that the Government company or corporation must so act not only when terminating the authority of an occupant of public premises but also when thereafter it seeks its eviction therefrom. The Estate Officer, would, therefore, have to consider whether or not the termination of the

authority was informed by reason and guided by public interest and also whether his eviction satisfied the same tests. In Paragraph No. 33 of the judgment in **Life Insurance Corporation of India (supra)**, it is held as under:-

> *"33. Plain reading of Section 4 and 5 of PPE Act, indicates that two fold satisfaction has to be reached by the Estate Officer viz that the occupant is in unauthorised occupation and that he is required to be evicted before the notice under Section 4 of PPE Act, is issued. After having formed an opinion, the Estate Officer is required to issue show cause notice specifying the grounds on which the order of eviction is proposed and calling upon the noticee to appear before the Estate Officer to show cause alongwith the evidence which they intend to produce in support of the cause shown."*

(18) It is submitted that for the purpose of arriving at a satisfaction that the public premises are in unauthorised occupation, the validity of the termination is required to be tested.

(19) Learned DSGI for the Respondent – Union of India submitted that the facts involved in the matter of **Life Insurance Corporation of India (supra)** are different, and

therefore, it is not applicable in the present set of facts, however, in my considered opinion, the ratio laid down in the said judgment is squarely applicable in the present set of facts.

(20) Learned Counsel for the Petitioners also relied on **M/s. Dwarkadas Marfatia (supra)** wherein the Hon'ble Apex Court held that where there is arbitrariness in State action, Article 14 springs in and judicial review strikes such an action down. Every action of the Executive authority must be subject to rule of law and must be informed by reason.

(21) Learned DSGI for the Respondent – Union of India submitted that the above citation is not applicable as there was Landlord Tenant relationship. However, the said judgment is relied on by the Petitioner emphasizing that all actions including the contractual dealings of, held, are subject to judicial review. The Court can see if such body has followed the statutory purpose and acted in public interest and not in malafide or arbitrary or for a collateral purpose.

(22) Learned Counsel for the Petitioners also relied on **Mahabir Auto Stores (supra)** in support of their contention

that if the State or its instrumentality is engaged in commercial transactions, its action must be reasonable, fair and just even when no formal contract entered into. In Paragraph No. 18 of the said judgment, it is held as under:-

> *"18. Having considered the facts and circumstances of the case and the nature of the contentions and the dealings between the parties and in view of the present state of law, we are of the opinion that decision of the State/public authority under Article 298 of the Constitution, is an administrative decision and can be impeached on the ground that the decision is arbitrary or violative of Article 14 of the Constitution of India on any of the grounds available in public law field. It appears to us that in respect of Corporation like IOC when without informing the parties concerned, as in the case of the appellant firm herein on alleged change of policy and on that basis action to seek to bring to an end the course of transaction over 18 years involving large amounts of money is not fair action, especially in view of the monopolistic nature of the power of the respondent in this field. Therefore, it is necessary to reiterate that even in the field of public law, the relevant persons concerned or to be affected, should be taken into confidence. Whether and in what circumstances that confidence should be taken into consideration cannot be laid down on any straight jacket basis. It depends on the nature of the fight involved and nature of the power sought to be exercised in a particular*

situation. It is true that there is discrimination between power and fight but whether the State or the instrumentality of a State has the right to function in public field or private field is a matter which,in our opinion, depends upon the facts and circumstances of the situation, but such exercise Of power cannot be dealt with by the State or the instrumentality of the State without informing and taking into confidence, the party whose rights and powers affected or sought to be affected, into confidence. In such situations most often people feel aggrieved by exclusion of knowledge if not being taken into confidence."

(23) The Petitioner is in occupation of the disputed shop for more than 30 years. He is paying taxes and has applied for lease renewal in his name in the year 2005. In response to his Application, even the Respondent – Union of India was ready to renew the lease subject to certain conditions, however in spite of showing his willingness, the License was not renewed. It also appears that in the year 2011, the Traders Association applied for renewal of License in the name of existing occupants. It is also a matter of record that the Ministry of Railway agreed to renew such lease in favour of the existing shops of the occupants, however, instead of renewing the lease,

issued Show Cause Notice. The said Show Cause Notice was duly replied by the Petitioner. Though it was informed that the next date will be informed to the Petitioner, suddenly on 01/08/2023, an order is passed by the Assistant Circle Engineer, Madhya Railway, Ballarpur which shows that the matter was fixed on 19/04/2023 and thereafter on 28/04/2023, 08/05/2023, 31/05/2023, 01/06/2023 and 13/06/2023 respectively. However, the dates were not intimated to the Petitioner. Without granting opportunity of hearing, the order dated 28/07/2023 came to be passed. Therefore, the Appeal under Section 9 of the said Act came to be filed along with the Application for stay.

(24) Learned Principal District & Sessions Judge, Chandrapur rejected the said Application for stay on the sole ground that there was no renewal of lease and the original lease was in the name of Shahiraj Alone. It is also held that the Appellant – Petitioner could not satisfy the Respondent about his lawful possession, therefore, the eviction order passed is just and legal. In the year 2005, the Respondent had offered the lease of the said shop to the Appellant – Petitioner but the Appellant

did not avail the opportunity, and therefore, after the death of original lessee Shahiraj, in the year 2021, the eviction Proceedings started against the Appellant – Petitioner.

(25) In my considered opinion, while passing such an order, the learned Principal District & Sessions Judge ought to have considered that the occupant of the shop is occupying the same since last 30 years. The Railways is having due knowledge about his occupation atleast since the year 2005. It also appears that in the year 2011, the Petitioner, again made request for renewal of License of the existing shop, however, neither any step was taken to renew the License nor any step was taken for eviction of those existing occupants for about 20 years. Even if it is held by the Estate Officer that the occupants are the unauthorized occupants, however, there has to be a subjective satisfaction to that effect recorded by the Estate Officer not only with regard to unauthorized occupation but also for the necessity for eviction of the same.

(26) It is vehemently argued by the learned DSGI for the Respondent – Union of India that the object of the said Act is

to provide eviction of unauthorized occupants from the public premises and for certain incidental matters, the said Act confers power upon the Estate Officer to evict such unauthorized occupants from the "public premises" in a smooth, speedy and time bound manner. Under the said Act, such Proceedings take around 5-7 weeks' time. As such, the impugned order is perfectly justified.

(27) It is expected being a Government undertaking that the action on the part of the Respondents should be fair and as per the provisions of law. From the facts and circumstances, it is clear that the Petitioners are there since last 30 or odd years and suddenly notice of eviction is given to them having due knowledge of the same to the Respondents, specifically when they were impressed that their Applications for renewal of lease as per the policy of the Ministry is under consideration. The Respondents are not profit making establishments. As such, the action should be fair, just and reasonable and should be consistent with good Government. It is legitimately expected from the Respondents that they will act as per the policy of the Government and assurance given to the

Petitioners. At present, it is sufficient that *prima-facie* there is no subjective satisfaction by the Estate Officer directing to vacate the premises specifically when the Petitioners are there since so many years with due knowledge to the Respondents. As such, they are entitled for protection till the Appeals are decided. As such, impugned orders passed by the learned Principal District & Sessions Judge, Chandrapur are liable to be quashed and set aside.

(28) Hence, I proceed to pass following order:-

O R D E R

(a) The Writ Petitions are **allowed**.

(b) The orders dated 30/03/2024 passed below Exhibit 5 in Misc. Civil Appeal Nos. 51/2023, 55/2023 & 53/2023 by the learned Principal District & Sessions Judge, Chandrapur are hereby quashed and set aside.

(c) The effect, operation and execution of the orders dated 28/07/2023 passed by the Respondent – Estate Officer is hereby stayed till the decision of Misc. Civil Appeal Nos. 51/2023, 55/2023 & 53/2023.

(d) The learned Principal District & Sessions Judge, Chandrapur is hereby directed to decide the Misc. Civil Appeal Nos. 51/2023, 55/2023 & 53/2023 within a period of three months from the date of receipt of copy of this judgment.

(e) It is made clear that what is held and observed by this Court in the present judgment are *prima-facie* observations with regard to the facts brought on record, however, it is open to the learned Principal District & Sessions Judge, Chandrapur, after hearing all the parties, to conclude the matter on its own merits.

The Petitions stand **disposed of** in the above terms. Pending Application(s), if any, stand(s) **disposed of**.

(M.S. JAWALKAR, J.)