

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION 3062 OF 2025
WITH
WRIT PETITION NO. 8065 OF 2004

Divisional Manager (LM),
Central Railway, Mumbai .. Applicant
IN THE MATTER BETWEEN:
Udharam Ammumal Parwani .. Petitioner
Versus
Union of India & Ors. .. Respondents

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- Mr. Hitesh Vyas a/w Mr. Chandrashekhar Yadav & Mr. Rasik Raut for Petitioner
 - Mr. T.J. Pandian a/w Mr. R.P. Ojha, Ms. Prajakta Joshi, Mr. Gautam Modanwal and Ms. Noorjahan Khan for Applicant / Respondent Nos. 2 and 3

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CORAM : MILIND N. JADHAV, J.

DATE : JUNE 09, 2025

P. C.:

1. Heard Mr. Vyas, learned Advocate for Petitioner and Mr. Pandian a/w Mr. Ojha, learned Advocate for Applicant i.e. Respondent Nos. 2 and 3 in Writ Petition.

2. Present Writ Petition was filed in 2004. Interim order was passed on 20.12.2005 by this Court (Coram : S.U. Kamdar, J.). I have perused the interim order. By virtue of the interim order, Petitioner was directed to deposit substantial amounts initially in the interregnum as capital (Rs. 30 Lakhs) and thereafter an amount of Rs.

30,000/- per month as compensation on and from January 2006 to be paid by 15th day of each month for use of the subject premises.

3. Mr. Vyas would inform the Court that Petitioner has complied with the interim order rather he has been complying with the same till date. He would persuade the Court to consider compilation of documents which is placed on record. Copy of the same is given to Mr. Pandian.

4. Interim Application is filed by Applicant - Central Railways seeking immediate hearing of the Writ Petition due to exigencies mentioned and stated in the affidavit in support of the Interim Application. However Mr. Vyas has drawn my attention to the fresh Show-Cause-Notice dated 23.06.2023 issued by the Estate Officer Central Railways in respect of the same subject premises despite pendency of the present Writ Petition as also the interim order being in force for the present. He would next persuade the Court to see the order dated 11.12.2024 passed by the learned Estate Officer of Central Railways, Mumbai appended in the compilation of documents which when read *prima facie* shows that in view of the exigencies mentioned by Central Railways for implementation of the project of the 5th and 6th Railway line, Petitioner has taken appropriate steps along with Central Railways to handover the area which is the subject matter of the Writ Petition to the Central Railways on terms which are

mutually agreeable and acceptable to both the parties. In that context, Mr. Vyas has placed on record proposed Consent Terms which were duly exchanged between the parties on 18.11.2024, copy of which is placed on record. Mr. Pandian however is completely unaware of these developments and has insisted upon the Petition to be heard.

5. Mr. Pandian for Central Railways is directed to take instructions on the aforesaid submissions recorded in this order and accordingly apprise the Court on the next adjourned date after considering the order dated 11.12.2024 passed by the Estate Officer. Mr. Pandian would persuade this Court to consider present Interim Application in this perspective and hear the present Writ Petition. In fact, the Railways ought to have approached the Court before issuing the fresh Show-Cause-Notice on 23.06.2023 for seeking leave in view of the interim order passed in the present Petition.

6. Mr. Vyas would submit that if the proposal contained in the proposed consent terms is accepted and approved by Central Railways, instead of adjudicating the Writ Petition on merit, Petitioner shall handover possession of the subject premises to the Central Railways subject to Central Railways adhering to the terms and conditions contained in paragraph No. 6 of the proposed consent terms. In effect what Mr. Vyas is proposing on behalf of Petitioner is that the Petitioner

should be entitled to return of the entire deposited capital amount of Rs. 30 Lakhs since the said deposit was primarily made by him without prejudice to the rights and contentions of the Petitioner as stated in the interim order itself. Mr. Vyas would submit that Petitioner should be entitled to return of the said amount along with appropriate interest as the said amount was enjoyed by the Railways since the date of its deposit.

7. *Prima facie* when the proposed consent terms which are contained in the draft of the consent terms are seen by me and considering the exigencies mentioned by Mr. Pandian which are elaborately stated in paragraph Nos. 5 & 6 of the Interim Application, there should be no impediment on the part of Central Railways to accept the draft consent terms which in my opinion is in the interest of the public at large. Petitioner is only asking his own deposited amount under the interim order and in return is willing to handover the subject property to Central Railways without any other condition. This is what is understood by the Court. Such terms should *prima facie* enure to the benefit of Central Railways. Needless to state that decision have to be taken by the Railways as informed by Mr. Pandian. However it is an irony that despite the order dated 11.12.2024 passed by the Estate Officer and the matter being adjourned thereafter, though it is stated in the said order that discussion with the Railways

Authorities have already been held, and despite there being a specific direction of the Estate Officer to the Railways to file immediate reply in writing to the aforesaid proposal / draft consent terms, the Railways has not filed any reply till date. Time is simply passing on. Mr. Pandian informs the Court that neither the Respondents nor the General Manager Central Railway are empowered to take a decision in this regard and the decision can only be taken at the highest level i.e. the Railway Board, New Delhi. Exigencies of the Railways are *prima facie* brought to the fore in the Interim Application when the Railways seeks to implement the project of 5th and 6th Railway line. Mr. Pandian has also argued that imminent demolition of the Sion Road Flyover Bridge will have to be carried out and in that process, the subject premises would also be affected and have to be demolished. If that be the case, it would in fact enure to the benefit of the Railways if it considers to accept the draft consent terms and the proposal contained therein.

8. In view of the above, present Writ Petition and companion Writ Petition No. 9397/2004 shall be heard together on the next date of hearing subject to hearing Mr. Pandian. It is clarified that in the meantime, interim order shall prevail. Advocates for Railways are directed to take appropriate instructions on the said proposal and accordingly apprise the Court on the same.

9. *Prima facie* it is seen that Petitioner before me is not able to conduct his business for the past 6-7 months in view of the present status of the subject premises. The Railways have dug up the vicinity of the said premises for the purpose of implementation of the 5th and 6th Railway line. I am informed in all fairness by Mr. Pandian and Mr. Ojha, learned Advocates for Railways that in the facts and circumstances of the present case, the decision making authority to accept the proposal would be the Railway Board only. If that be the case, General Manager of Central Railways is directed by this Court to place a copy of this order before the Chairman Railway Board, New Delhi along with a copy of the Estate Officer's order dated 11.12.2024 and proposed draft of the consent terms dated 18.11.2024 and seek appropriate instructions and order from the Railway Board for considering the draft proposed terms and put a finality to the present case. It is clarified that interim order passed by this Court shall prevail in the interregnum until both Writ Petitions are finally heard by this Court. At the request of Mr. Pandian, four weeks time is given to the Central Railways to obtain approval from the Railway Board. Needless to state that if the Railways has any objection to accept the said proposal, the same shall be brought to the notice of this Court after which this Court shall consider hearing the present Writ Petition finally, if so required.

10. Interim Application No. 3062 of 2025 for expeditious hearing of the Writ Petitions having been considered stands disposed of.

11. List Writ Petition along with Writ Petition No. 9397 of 2004 on board on **7th July, 2025**. To be placed under the caption "**First on Board**".

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[MILIND N. JADHAV, J.]

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
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