

*Gitalaxmi*

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 2340 OF 2025

Darshana Kolte and 16 others

...Petitioners

*Versus*

Estate Officer, Divisional Engineer (Estate /  
North) Western Railway, Mumbai and 5  
others

...Respondents

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Mr. Sangram Chinnappa, Advocate for the Petitioners.

Mr. J. G. Aradwad (Reddy) a/w Mr. Abhijit Patil, Advocate for  
Respondent No. 4.

Mr. Mohit Jadhav, Addl. G.P for Respondent No. 6.

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**CORAM : R. I. CHAGLA, J.**

**DATE : 5 February 2025.**

**ORDER :**

1. The learned Counsel appearing for the Petitioners has  
tendered the Affidavit of Service dated 5 February 2025, which shows  
that Respondents No. 1 and 2 have been served vide hand delivery on  
30 January 2025; Respondents No. 3 to 5 have been served vide  
hand delivery on 3 February 2025 and Respondent No. 6 has also  
been served vide hand delivery on 4 February 2025.

2. Further, vide service letter dated 3 February 2025, Respondents No. 1 and 2 had been informed that the matter is scheduled to be listed today. Copy of the service letter has been annexed at Exhibit-C to the Affidavit of Service.

3. The Respondents No. 1, 2, 3 and 5 though served, have failed to make an appearance. The learned Counsel appears for Respondent No. 4 and Respondent No. 6, respectively.

4. The learned Counsel appearing for the Petitioners has taken this Court through the impugned order dated 5 December 2024, by which Respondent No. 1, the Estate Officer in exercise of the powers conferred on him by Sub-Section (2) of Section 5A of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, has directed that the Petitioners are liable for eviction from the said premises and shall vacate the premises within a period of 15 days from the date of publication of the order. He has submitted that the said order was communicated to the Petitioners only on 31 December 2024.

5. The learned Counsel appearing for the Petitioners has

also taken this Court through the decision of the Supreme Court dated 16 December 2021 in the case of “*Utran Se Besthan Railway Jhopadpatti Vikas Mandal Vs. Government of India & Others*”<sup>1</sup> and in particular, paragraph no. (iv), wherein the Supreme Court has held that,

*“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 structures, including their identity and profile should be duly recorded, which record should be preserved by the Collector for considering the eligibility of those persons for being provided suitable residential accommodation after being evicted owing to proposed demolition action.”*

6. The learned Counsel appearing for the Petitioners has referred to the fact that prior to issuance of the impugned order, there was no survey carried out by Respondent No. 1 as contemplated by the Supreme Court, which is made applicable to these proceedings as well. He has submitted that there are documents, which have been annexed as Exhibits, which show that the survey had been carried out in the year 2000. The concerned

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<sup>1</sup> Special Leave Petition (Civil) Diary No. 19714 of 2021.

authority had found the Petitioners to be eligible before the cut-off date of 1 February 2000 put in place by the 2014 Amendment to the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971. The copies of survey receipts and other documents of the Petitioners have been annexed to the Writ Petition at Exhibits-A, A1 to A16.

7. Having considered the submissions of the learned Counsel for the Petitioners and the urgency made out as the Officers of Respondent No. 1 are visiting the Petitioners' premises for the purpose of their eviction, as well as the impugned order having directed the Petitioners' eviction within a period of 15 days from publication of the impugned order, a *prima-facie* case has been made out for grant of ad-interim stay of the impugned order dated 5 December 2024.

8. Respondents No. 1 and 2 being the contesting Respondents, though served, have failed to make an appearance. There are documents on record of the year 2000, which include survey receipts, which show that the survey had been carried out in the year 2000 and which show that the Petitioners have been found

to be eligible to their structures prior to the cut-off date i.e. 1 January 2000. These documents are at Exhibits-A, A1 to A16 as aforementioned.

9. Having perused the impugned order, the impugned order nowhere mentions that a fresh survey has been carried out prior to the issuance of impugned order of eviction of the Petitioners, passed by Respondent No. 1, the Estate Officer. The Supreme Court vide order dated 16 December 2021 has directed in paragraph no. (iv) as aforementioned that before commencing the process of eviction and removal of the structures, such survey is required to be carried out.

10. Thus, till the next date, ad-interim relief is granted in terms of prayer clause (d) of the Writ Petition staying the operation and implementation of the impugned order dated 5 December 2024 issued by Respondent No. 1.

11. Office to issue notice to Respondents No. 1 and 2, returnable on **4 March 2025**.

**[R. I. CHAGLA, J.]**