

sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5766 OF 2012

Abdul Kadar Ismail Harun ..Petitioner.

V/s.

Controller of Accommodation & Ors. ..Respondents.

Mr.Prakash L. Mahadik for the petitioner.

Mrs. M.P.Thakur, A.G.P. for respondent Nos.1 to 3.

**CORAM : A.S.OKA AND
A.K. MENON, JJ.**

DATED : 13TH JANUARY, 2015

P.C. :-

1. Heard learned counsel appearing for the petitioner and learned AGP for the respondents. The premises subject matter of this writ petition is room No.148, 4th floor, Great Western Building, Fort, Mumbai-23. The said room No.148 (for short 'the said premises') was requisitioned under the Bombay Land Requisition Act, 1948 (for short 'the said Act'). After its requisition, the said premises was allotted to Smt. Zulekhabai Harun (the original allottee).

2. The petitioner claims to be a legal representative of

the original allottee and he claims that he is residing in the said premises.

3. A Writ petition was filed by the owners / landlord of the said premises in this Court. The said Writ Petition No.2596 of 1986 was decided by order dated 25th September, 1998 by a Division Bench of this Court. The Division Bench passed an order of de-requisition and directed the Government to restore the possession to the landlords subject to the result of the Special Leave Petition No.15788 of 1998 filed by the State Government. We must note here that the owners / landlord of the premises have not been made a party to this petition. Under the communication dated 10th July, 1996 issued by the Controller of Accommodation, reliance was placed on the interim order passed by the Apex Court by contending that the original allottee is fully protected under the said order. By communication dated 22nd July, 1997 the Controller of Accommodation informed the owner of the said premises that the Government allottee or the heirs of the Government allottee have become deemed tenants in respect of the said premises. On 9th September, 2008 a letter was addressed by the State Government to the original allottee. Reliance is placed on the decision of the Apex Court in C.A. No.2026 of 2000 in which it is held that the status of deemed tenant will be conferred only on

those persons who are in the employment of the State Government on the date on which amendment to the statute was made. In the said communication, it is further stated that considering the decision of the Apex Court in C.A. No.2026 of 2000, the premises will be de-requisitioned and, therefore, the original allottee was called upon to vacate the premises. It is pertinent to note that the present petitioner is claiming to be a legal representative of the original allottee. In the reply to the notice issued on 17th September, 2008, the petitioner relied upon the amendment made to the said Act as well as to the relevant Rent Control Act. On 3rd May, 2011 the Controller of Accommodation passed an order of eviction against the petitioner in exercise of the powers under sub-section (1) of section 8C of the said Act on the ground that the petitioner was in unauthorised possession of the said premises. The said order also records that the premises need not be continued under requisition. Therefore, the order of eviction was passed against the petitioner. The petitioner preferred a statutory appeal under section 8-D of the Act. By order dated 25th May, 2012, the said appeal was dismissed by the appellate authority. In the said order, it is recorded that the said premises was required to be derequisitioned.

4. This order of eviction has been subjected to a

challenge in the present writ petition.

5. Before we deal with the submissions made on merit, we must note here that to the show cause notice issued on 9th September, 2008 to the original allottee, a reply was submitted on 17th September, 2008 by the present petitioner claiming to be a legal representative of the allottee. After finding that the petitioner was not the allottee, the impugned order of eviction was passed. In the appeal preferred against the order of eviction, it is specifically stated by the petitioner that the allottee proceeded to Haj in December, 2007 and since June, 2008 she is not being heard of. Though the petitioner is claiming to be a legal representative of the original allottee, it is not the case of the petitioner that the original allottee is no more. Even the presumption under section 108 of the Indian Evidence Act, 1872 can be pressed into service by the petitioner only on the completion of a period of 7 years from June, 2008. The question whether the original allottee is alive or the presumption under section 108 will apply, can be decided only by a competent Civil Court. Therefore, this petition filed by the petitioner claiming to be a legal representative of the deceased allottee will have to be thrown out only on the ground that there is nothing on record to show that the original allottee is no more. Moreover, the petitioner is relying upon an order of de-requisition passed in

writ petition filed by the owners of the premises. The order of de-requisition was passed on 25th September, 1998. In this petition the contention of the petitioner is that the petitioner is a nephew of the original allottee. The petitioner has annexed a report of an inspector at page 37 on which a statement of the petitioner has been recorded on 27th April, 2002 stating that one Ismail Merchant who was the brother of the original allottee was regularly residing in the said premises. Even assuming that the original allottee is dead, the petitioner has not obtained a declaration from the competent Court that he is a legal representative of the deceased allottee. Moreover, other persons, including the brother of the deceased, who are entitled to claim heirship are not made parties to the petition. Therefore, the petition deserves to be dismissed.

6. However, we are adverting to the submissions made on merits. The first submission of the learned counsel appearing for the petitioner is that the proceedings under the said Act in relation to the said premises could not have been initiated as by judgment and order dated 25th September, 1998 passed in a Writ Petition filed by the owner / landlord of the premises, the State Government has been directed to de-requisition the said premises. His submission is that if the premises stand de-requisitioned, the proceedings under the said Act are not

maintainable. The second limb of the argument is based on the provisions of Maharashtra ordinance 20 of 1997 and in particular amendment made by it to the Bombay Rent Act and to the said Act. The third submission is that the petitioner was residing with the allottee in the said premises from the date of allotment and, therefore, the order of requisition is also for the benefit of the petitioner and his family.

7. The submissions are self destructive. The order of this Court dated 25th September, 1998 in Writ Petition No.2596 of 1986 directed the State Government to restore the possession of the said premises thereof to the landlord subject to the result of S.L.P. No.15788 of 1998. If according to the petitioner, this order has attained finality, the petitioner has no right to occupy the said premises and will have to hand over the possession thereof to the landlord. Moreover, this submission has been made in the absence of the landlord. There is one more aspect to the case. Even the impugned order of the appellant authority notes that the premises are required to be de-requisitioned and, therefore, the eviction of the petitioner is necessary. Even the order of the Controller of Accommodation which was challenged in appeal records that the premises are required to be de-requisitioned and, therefore, it is necessary to evict the petitioner who was in unauthorised occupation. Unless the petitioner is evicted in

accordance with law, it is obvious that the State Government cannot comply with the order dated 25th September, 1998 in Writ Petition No.2596 of 1986.

8. The reliance placed by learned counsel for the petitioner on the amended provisions of the said Act as well as Bombay Rent Act will not help the petitioner. Even assuming that the same are applicable, the petitioner is claiming as a legal heir of the original allottee and there is nothing on record to show that the original allottee is dead. An attempt is made to claim that the petitioner is entitled to the benefit of order of allotment. Reliance is placed on the order of allotment at Exhibit-B. It is obvious that as the allotment was to the original allottee, the members of the family of the original allottee were entitled to occupy the said premises. By no stretch of imagination, every member of the family of the original allottee gets an independent right to occupy the said premises.

9. Moreover, in the present petition, the petitioner is claiming to be the legal representative of the original allottee, therefore, he cannot claim any right, title and interest which is adverse to the original allottee. Even assuming that the petitioner is entitled to claim independent right, the adjudication of the said independent rights cannot be made without the

original owners being made a party to the petition. Assuming that the original allottee is no more, there is no declaration obtained by the petitioner from the Competent Civil Court.

10. As stated earlier, the impugned order has been passed to enable the State Government to de-requisition the premises.

11. Therefore, even on merits, we find that no case for interference is made out in the writ jurisdiction under Article 226 of the Constitution of India. Accordingly, the petition is rejected.

12. On prayers made by learned counsel for the petitioner, the ad-interim relief which was operating till today to continue for a period of 12 weeks from today. The petitioner will not part with possession and will not create any third party interest in respect of the said premises during the said period.

(A.K.MENON, J.)

(A.S.OKA, J.)