

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION*

CIVIL REVISION APPLICATION NO. 347 OF 2007

1. P. A. Patel
2. Y. A. Patel
(since deceased through his legal heirs)
having their office at Crescent chambers,
3rd floor, Tamarind Lane,
Fort, Mumbai 400 023.
- 2(a). Mihir Y. Patel,
Age – 49 years, R/o
2, Maninagar, CHS, Char Rasta,
Mani Nagar, Ahmadabad – 8.

.. Applicants

Versus

1. The Life Insurance Corporation of India
A Corporation established under the
Life Insurance Corporation Act, 1956,
Having its Western Zonal Office
at Yogakshem, East Wing, Jeevan
Bima Marg, Mumbai – 400021.
2. M/s Dayabhai Nandlal and company.
3. M/s.Popatlal Jaisingh
4. Vinod Patel
The present address of the Respondent
Nos.2 to 4 not known.
5. The Estate Officer
Life Insurance Corporation of India

The Public Premises (Eviction of Unauthorized Occupants) Act, 1971
Western Zonal Office, Yogakshem,
East Wing, Jeevan Bima Marg,
Mumbai – 400021.

6. Zonal Manager, LIC of India
Western Zone, Yogakshema
Mumbai 400021.

.. Respondents

Mr.Vishwajeet Sawant a/w Prabhakar Sawant, for Applicants.
Mr.Bharat Mehta, for Respondent Nos.1, 5 and 6.

***CORAM : N.M.Jamdar, J.
Saturday, 01 October 2016.***

Oral Judgment :

The Applicants challenge the order dated 27 April 2006 in Miscellaneous Appeal No.2 of 2002 confirming the order passed by the Estate Officer dated 3 February 1992, evicting the Applicants from the premises, under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

2. The premises are situated on the third floor of the building named as 'Crescent Chamber', at Tamarind Lane, Fort, Mumbai. Initially, the tenant of the premises was a firm called M/s.Dayabhai Nandlal and Company. Thereafter premises were in occupation of a firm called M/s Popatlal Jaisinghbhai & Company. The Respondent-

Corporation took over the ownership of the building some time in the year 1958. By notice dated 10 December 1970, proceedings were initiated against the original tenant i.e. M/s Dayabhai Nandlal & Co. The notice was contested before the Estate Officer, who proceeded to pass an order of eviction. Thereafter an appeal was filed by M/s. Dayabhai Nandlal & Co., one Shri Vinod Patel and Applicants in the City Civil Court, Mumbai bearing Miscellaneous Appeal No.115 of 1992. The learned City Civil Court set aside the order of eviction by Judgment and order dated 31 March 1994. A notice thereafter was issued on 23 July 1997 seeking to terminate the tenancy of M/s Dayabhai Nandlal & Co. This notice was replied by Respondent No.4 and Applicants. On 27 July 1998, the Corporation filed an application for eviction before the Estate Officer against Applicants bearing Case No.752 and 752A of 1998. By order dated 5 December 2001, the Estate Officer allowed the application filed by the Corporation and directed eviction from the premises and also damages. An appeal came to be filed by Applicants which was dismissed on 28 August 2002. Applicants challenged the order dated 28 August 2002 in Writ Petition No.6557 of 2002. The Writ Petition was disposed of by order dated 11 December 2002 and proceedings were remanded back to the Principal Judge on the grounds indicated in the order. On 27 April 2006, learned Principal Judge, City Civil Court held that the Respondent-Corporation had made out a case of eviction of

Applicants from the premises and also the appeal could not be considered as it was not maintainable since necessary parties were not joined. Thereafter present Petition has been filed. Rule was issued on 25 July 2007 and interim order was granted.

3. I have heard Mr.Vishwajeet Sawant, learned counsel for Applicants and Mr.Bharat Mehta, learned counsel for Respondent-Corporation.

4. Mr.Sawant, the learned counsel for Applicants submitted that in the earlier round of litigation, the learned Principal Judge in the order dated 31 March 1994 has categorically upheld the independent right of Shri A.V.Patel, father of Applicants, through whom Applicants are claiming. It was contended that the learned Principal Judge had observed that, the occupation of Shri A.V.Patel cannot be stated to be unauthorized and in view of their long standing possession the Respondent-Corporation should negotiate with Applicants. Mr. Sawant submitted that when subsequently proceedings were taken out and the matter reached this Court, the learned Single Judge had referred to the observation made by the Principal Judge in the order dated 31 March 1994. Mr.Sawant submitted that once the independent right of Shri A.V.Patel was recognised, if any proceedings had to be initiated against Applicants, the heirs of Shri A.V.Patel, then the procedure under the Act for eviction of Applicants has to be undertaken by issuing appropriate

notice. He submitted that while initiating action afresh the Respondent-Corporation has again proceeded on the premise that M/s.Dayabhai Nandlal & Co. was the original tenant and all other parties, M/s Popatlal Jaisingh, Shri A.V.Patel do not have any independent right, which position is not correct. Mr.Sawant submitted that there is no averment in the notice specifically that the Applicants though have an independent right, are not using the premises and no cogent evidence is brought on record. It was also submitted that the finding of the learned City Civil Court Judge that the appeal is not maintainable is entirely incorrect in view of Rule 9 of the Public Premises (Eviction of Unauthorized Occupants) Rules, 1971. He also submitted that while remanding the proceedings to the learned Principal Judge, the aspect of non-joinder of the Respondent was not kept open.

5. Mr.Mehta the learned counsel for Respondent-Corporation on the other hand submitted that, the finding recorded in the order dated 31 March 1994 proceeds on a basis as if Shri A.V.Patel was in occupation as a tenant. He submitted that the view taken by Apex Court in case of *Suhas H.Pophale Vs Oriental Insurance Company Limited and its Estate Officer* – ¹ extending the benefit to the tenants is now referred to larger bench in the Apex Court and therefore, this position of law cannot be made applicable. Mr.Mehta submitted that the notice has been issued to Applicants since copies were marked,

¹ - (2014) 4 Supreme Court Cases 657

and they were clearly made aware of the ground of eviction and they had participated in the proceedings with full knowledge as to what is put against them. He submitted that both, the Estate Officer and the learned Principal Judge, have recorded a finding of fact that the premises are not being used by Applicants. He submitted that this finding of fact is not open for interference in the revisional jurisdiction. Mr.Mehta submitted that for non-joinder of the Respondent Corporation as well as the original tenant as party to the appeal, the appeal was not maintainable and there is no error in the order passed by the learned Principal Judge and the Estate Officer.

6. Firstly, the order passed by the learned Principal Judge dated 31 March 1994 will have to be taken note of. The learned judge was considering a statutory appeal provided under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 from the action initiated the Estate Officer and the order passed on 3 February 1992. In these proceedings action was initiated against M/s.Dayabhai Nandlal & Company as an original tenant and Applicants as unauthorized occupant claiming through M/s Dayabhai Nandlal & Company. While allowing the appeal and setting aside the order passed by the Estate Officer, the learned Principal Judge recorded a finding as follows -

'15. In view of this voluminous documentary evidence, which has already been submitted to the Respondents, before the proceedings were initiate, it is not open to the Respondent No.1 to question the right of

A.V.Patel in respect of the enquiry premises or contend that he was an unauthorized occupant or that they are trespassers and proceedings are rightly initiated and they are liable to be evicted. So far as order of the Estate Officer is concerned, Respondent No.1 has not cared to produce these documents before the Estate officer, in order to enable him to appreciate the right of A.V.Patel in respect of the enquiry premises.

16. '

7. The learned Principal Judge thereafter disposed of the appeal holding as under -

'17. So far as, the Appellants are concerned, it is the admitted position that A.V.Patel was in occupation of the premises since prior to the Respondent becoming the landlords of the said premises. Appellant nos 3 & 4 claimed a right in the premises by virtue of the facts that they are the heirs and legal representatives of the A.V.Patel. In view of the facts that A.V.Patel has been in occupation of the premises it is not open to Respondent no.1 to resort to proceedings under the Public Premises Act and seek to oust the Appellant from the premises by resorting to the summary remedy under the Public Premises Act, more particularly when from 1963 till the initiation of these proceedings in 1990, Respondent no.1 though aware of existence of A.V.Patel in the premises did not care to take any action against the Appellant. On the contrary, I am of the opinion that, in this case, the Respondent no.1 should have negotiated with the Appellants and regularized their rights in respect of the premises instead of initiating proceedings under the Public Premises Act, so far as, the order of Estate Officer is concerned, I am of the opinion that the order passed is without any basis, is illegal and deserves to be set aside. Hence, I pass the following order'.

8. This order dated 31 March 1994 was not challenged by the Respondent-Corporation. Therefore as far as Respondent-Corporation is concerned, they are bound by the observations and the conclusion. The Act provides an appeal against the order of the Estate Officer. The statutory appeal is a conclusion of proceedings between the parties under the Act. Therefore the observation and findings upholding the right of Shri A.V.Patel and the conclusion that he is not in unauthorized occupation attained finality as far as the parties are concerned. Because the decision in the case of *Suhas H. Pophale* has been referred to larger bench by the Apex Court, the finding which stands concluded in the lis between the parties, cannot now be reopened. Therefore, one will have to proceed on the basis that Shri A.V.Patel was not in unauthorized occupation nor a trespasser and was in occupation of the premises on his own right.

9. Even after the independent occupation of Shri A.V.Patel was recognised, it was open to the Respondent-Corporation to proceed against Shri A.V.Patel and Applicants. But while doing so it was incumbent upon Respondent-Corporation to issue notice of show-cause as stipulated under Section 4 of the Act. Section 4 of the Act reads thus -

'4. Issue of notice to show cause against order of eviction.—

(1) If the estate officer is of opinion that any persons are in unauthorised occupation of any public premises and

that they should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall—

(a) specify the grounds on which the order of eviction is proposed to be made; and

[(b) require all persons concerned, that is to say, all persons who are, or may be, in occupation of, or claim interest in, the public premises,—

(i) to show cause, if any, against the proposed order on or before such date as is specified in the notice, being a date not earlier than seven days from the date of issue thereof; and

(ii) to appear before the estate officer on the date specified in the notice along with the evidence which they intend to produce in support of the cause shown, and also for personal hearing, if such hearing is desired.]

(3) The estate officer shall cause the notice to be served by having it affixed on the outer door or some other conspicuous part of the public premises, and in such other manner as may be prescribed, whereupon the notice shall be deemed to have been duly given to all persons concerned.

Therefore, in view of the judgment and order dated 31 March 1994, if the Respondent-Corporation had to move an action of eviction against A.V.Patel and Applicants i.e. the sons of A.V.Patel, a specific notice under Section 4 of the Act specifying the grounds of eviction, ought to have been issued. Instead, the Respondent-Corporation

again issued a notice to M/s.Dayabhai Nandlal & Co. stating that it is the monthly tenant and all other persons are in unauthorized occupation, thereby completely ignoring the binding decision dated 31 March 1994 that Shri A.V.Patel was not in unauthorized occupation. In this notice it is not put to Applicants *per se* that they are not using the premises and what is referred to is non-occupation by the original tenant. Therefore, the notice dated 23 July 1997 on the basis of which the present action of eviction is founded, cannot be stated to be a notice as contemplated under Section 4 of the Act as far as Applicants are concerned in view of the facts of the present case where there is a binding decision in a statutory appeal.

10. It is the contention of Mr.Mehta that in any case Applicants were aware of the case that was put against them and therefore, there is no prejudice to Applicants. This submission cannot be accepted. As stated earlier notice was not to Applicants or Shri A.V.Patel recognising the independent right of Shri A.V.Patel, but it was issued seeking possession from the Applicants as sequator to eviction of the main tenant. Once Applicants were not called upon to demonstrate their individual right, knowledge cannot be imputed to them. In short that the Applicants are not occupying the premises given to them in their own right, is not the case put by the Respondent-Corporation. Therefore, in the facts of the present case, it cannot be stated that no prejudice is caused to Applicants by merely marking

the copy of the notice issued to M/s Dayabhai Nandlal & Co. Mr.Mehta submitted that show-cause notice was issued to Applicants and in the show-cause notice which was clearly addressed to them, it was put to them that they are in unauthorized occupation and also are not using the premises. Again the notice primarily proceeds on the basis that Shri A.V.Patel had no independent right and only the earlier partnership was recognised as a tenant. The issue as to whether Applicants were actually putting the premises to use as on the date of notices, only an ancillary issue, even going by show-cause notice.

11. Second contention of Mr.Mehta is that the Applicants participated in the proceedings and evidence has been led that Applicants are not occupying the premises and this ground having been proved and confirmed in appeal, in the revision this Court ought not to interfere.

12. If a finding is perverse or proceeds on conjectures the Revisional Court can always interfere. What was the foundation for arriving at the factual findings needs to be seen, and also whether erroneous interference in law have been derived. Evidence was led on behalf of the Applicants and the Respondent-Corporation before the Estate Officer. The first witness of the Respondent was P. S. Hariharan, an officer of the Corporation. He deposed that he last

visited the premises in September 2000. He had visited the premises a year back and at both times, he found that the premises were locked. The last visit was in the afternoon around 3.30 to 4.00 p.m. He noticed the board of M/s Popatlal Jaisinghbhai & Company and Shri A.V.Patel. The second witness of Respondent-Corporation was Diwakar Gangadhar Welankar. He was working as a building Inspector and his duty was to collect rent and submit report. He was given certain area and buildings for inspection and related work. He had stated that in normal circumstances he would attempt the delivery three times and then paste the notice. He had stated that the notice dated 23 July 1997 was pasted on 14 August 1997. The third witness examined was Ashok Vishnu Kelkar, who was the Valuer to assess the damages. He had stated that the internal inspection could not be carried because the premises were locked when he visited the premises. On behalf of Applicants, Shri P.A.Patel was examined. He had stated that he is carrying on business from the premises. He stated that premises were being used by him as heir of A.V.Patel for business office premises. He had stated that he was a businessman trading in paper and stationary and carrying on the business in the application premises. When he was asked the name and style of the business, he had stated he would not like to reply the question. He was then asked as why he would not like to reply to the question, he had answered that the entire theory is whether Mr.A.V.Patel is legal tenant and as a heir he has given all

the evidence that his father is legal occupant. He specifically stated that all the paper regarding transactions of business and bank account with various Banks with pass books were with him and he was ready to produce the same. He was then asked whether he was carrying on his business as sole proprietor or partnership. He had refused to answer the question. He also stated that Y.A.Patel is elder brother of Opponent No.5, Opponent No.3 is retired 82 years old. Then it was asked whether Opponent Nos.3, 4 and 5 are carrying on business jointly to which he had replied that at that moment there is no business as members of joint family. This is basically the evidence that has come on record during the proceedings before the Estate Officer.

13. The Estate Officer on the basis of this evidence recorded the finding that the premises are not being used by the Applicant. The learned City Civil Court Judge in appeal dealt with this issue primarily in paragraph No.24 and 25 of the Judgment, learned Judge with reference to the evidence of the parties held that Applicants did not give proper replies, the brother and uncle of the Applicants have retired. He had admitted that at present there is no business. The learned Principal Judge also held that some of the Applicants have retired, one is of advanced age and he does not come to the office premises regularly and that one of them had stated that at that moment there was no business and the members were of the

joint family. The learned judge concluded that the Applicants are not using the premises.

14. In these circumstances and the material before it, the learned Principal Judge in two paragraphs drew a conclusion that the Applicants are not using the premises. Question is whether this conclusion in law could be drawn on the basis of the material on record. Further question is whether any further inquiry needs to be carried out as to whether the Applicants are using the premises are not. It is the Respondent-Corporation which is trying to seek eviction of the Applicants on the ground that they are not using the premises. As stated earlier, the entire attempt was to seek eviction on the ground that M/s Dayabhai Nandlal was in unauthorized occupation, which aspect has been dealt with earlier.

15. The Respondent-Corporation examined only two witnesses. First witness i.e. Shri Hariharan on his own showing visited the premises on 6 September 2000 and a year back and on both dates the premises were found locked. On one day he visited in the afternoon. There could be various reason why on these two dates the premises were locked. It is not the case that he made inquiries with the neighbours and he was informed that nobody is using the premises. Therefore, on the basis of only two visits that too, with a gap of one year, a presumption would not follow that no business is

carried out and the premises are locked. Second witness is the valuer-Welankar who stated that when he went for inspection the premises were found locked. It is not the case that an advance intimation was given or inspite of notice the premises were not opened. Since the inspection was not carried out, the position as to whether the premises were in use or not, did not come forth. The other witness simply stated that notice was pasted. Even assuming that initial burden was discharged and the burden shifted on Applicants, applicants had asserted that they are carrying on business. Applicants were ready to produce all the documentary evidence which they stated that they had brought before the Estate Officer. They were not called upon to do so. Applicants had shown willingness to place the evidence on record. Applicants had only stated that there is no business as a joint family, which statement has been wrongly construed by the learned Judge as there was no business at all in the premises. The fact that has been highlighted by the learned counsel for the Respondents is that Applicants refused to state the manner in which the business was carried on whether it was proprietorship or joint family and the name. The Appellant had given reason why he did not wish to answer that question. Therefore, on this basis of such material i.e. two visits in the span of two years, the order of eviction, which has drastic consequences, cannot follow.

16. However, I do not wish to foreclose the right of Respondent-Corporation to seek action against Applicants by issuing a notice regarding non-occupation wherein the parties will produce the evidence wherein factual position can be ascertained. This is to highlight that the evidence which was adduced was not cogent enough to draw a presumption that order of eviction must follow on the ground that there was no business carried out. The finding of fact of the Estate Officer and the learned Principal Judge, does not rest on a solid foundation but is based on pure conjectures and therefore, the finding does warrant interference.

17. It was also urged by Mr.Mehta that Applicants had failed to prove their authorisation from the earlier tenant as well as Shri A.V.Patel. As far as the relationship with Shri A.V.Patel is concerned, Applicants are sons of A.V.Patel and are claiming as an heir. Respondent-Corporation had refused to accept that Shri A.V.Patel had independent right inspite of finding against them. Therefore, Applicants had asserted that the right of Shri A.V.Patel, through whom they are claiming as an heir, should be recognised.

18. Mr.Mehta supported the findings of the learned Principal Judge that the Appeal was not maintainable for non-joinder of the original tenant M/s Dayabhai Nandlal and Co. and ors., and the Life Insurance Corporation, as parties. In this context, the decision of the

learned Single Judge in the Writ Petition No.6557 of 2002 needs to be noticed. In this Petition order passed by the Principal Judge on 28 August 2002 was assailed before the learned Single Judge. An argument was advanced regarding maintainability of the Appeal on the ground that the earlier tenant has not been made party to the Appeal. While remanding proceedings, the only issue as to maintainability of the Appeal in absence of other parties to whom original notice terminating the tenancy, was kept open. The issue as to whether the Life Insurance Corporation should be made party or otherwise was not referred to in this decision.

19. Furthermore, on the ground of non-joinder Mr.Sawant relied on Rule 9 of the Public Premises Act. Rule 9 reads thus -

'9. Procedure in appeals. - (1) An appeal preferred under section 9 of the Act shall be in writing, shall set forth concisely the grounds of objection to the order appealed against, and shall be accompanied by a copy of such order.

(2) On receipt of the appeal and after calling for and perusing the record of the proceedings before the estate officer, the appellate officer shall appoint a time and place for the hearing of the appeal and shall give notice thereof to the estate officer against whose order the appeal is preferred, to the appellant and to the head of the department or authority in administrative control of the premises.'

The perusal of this rule, which lays down procedure for appeal proceedings, states that on receipt of the appeal, notice is to be given to the Estate Officer against whose order the Appeal is preferred and the head of the department or the authority in the administrative control of the premises. In the present case Applicants have joined the Estate Officer and the Zonal Manager. It is not in dispute that the Zonal Manager is in administrative control. Therefore going by the language of Rule 9 the minimum requirement was satisfied by the Appellant. The Rule does not contemplate that apart from these parties if other parties are not joined, the appeal should not be taken cognizance of and should be dismissed at the threshold. In any case, Shri A.V.Patel is no more, earlier firms have been dissolved therefore, the dispute now remains only between the Applicants and the Respondent-Corporation. The Zonal Manager has been joined for the Respondent-Corporation. Through the administrative head, the Zonal Manager, Respondent-Corporation was fully made aware of the proceedings. As far as the joining of earlier two partnership firms are concerned, the partnership firms were dissolved. Even otherwise an appeal could have been filed by these partnership firm against the order of the Estate Officer in their independent right. Applicants pursued their independent right. Therefore on this ground alone the learned Judge could not have held against Applicants that the appeal itself was not maintainable and was liable to be dismissed as not maintainable. It was also open to the learned Principal Judge to call

upon Applicants to cure the defect keeping in mind the nature of the proceedings and the effect of the outcome on the parties.

20. Therefore it has to be held that the action of the Respondent-Corporation of not recognising independent right of Shri A.V.Patel was clearly contrary to the binding decision between the parties, rendered on 31 March 1994. Once the independent right of Shri A.V.Patel was recognised a specific notice calling upon him to show cause why he and the Applicants - his heirs, should not be evicted, had to be issued, which was not done and the entire proceedings again were initiated on the premise that Shri A.V.Patel had no independent right. Merely on the basis of few visits wherein the premises were found locked, non-occupation could not have been made foundation of eviction of Applicants. In any case non occupation by the Applicants was only an ancillary issue in the notice and there was no full-fledged attempt nor any detailed adjudication on this issue.

21. Before parting it needs to be noticed that this Civil Revision Application had come up before learned Single Judge, (*Shri R.G.Ketkar, J.*,) and on 13 July 2015 wherein following order was passed -

'1. Heard Mr. V.P.Sawant, learned counsel for the applicants and Mr.Bharat Mehta, learned counsel for respondents no.1, 5 and 6. In the order dated 30.6.2015,

it was recorded that arguments are concluded, order is reserved. It was adjourned to 13.7.2015.

2. Mr. Sawant submitted that in the order dated 31.3.1994 passed by the learned Principal Judge, City Civil Court, Greater Bombay in Misc. Appeal No.115 of 1992, it was held that the applicants herein are authorised occupants of T.C. No. 1836, 3rd floor, Crescent Chambers, Fort, Mumbai 400 001. He submitted that in pursuance thereof, the applicants approached respondents for regularisation and transfer of tenancy on legal heirship basis. However, A.W.1-Hariharan, Administrative Officer, Estate Department deposed that as per records, O.P. nos 4 and 5 (applicants herein) asked for transfer of tenancy on legal heirship basis to which L.I.C. was not agreeable. Mr. Sawant, upon taking instructions from petitioner no.1-Shri P.A.Patel, who is present in the Court, states that without prejudice to rights and contentions of the applicants in the present proceedings, the applicants will apply for regularisation and transfer of tenancy. He further states that the applicants were regularly tendering rent to the respondents. However, the same was not accepted. He states that without prejudice to rights and contentions of the applicants, the applicants will tender arrears of rent/compensation along with representation to the respondents within two weeks from today. He submitted that let premium/transfer charges be levied as on 31.3.1994 when the learned Principal Judge observed that respondent no.1 should have negotiated with the applicants and regularise the rights in respect of the suit premises.

3. Mr. Mehta, upon taking instructions from Mr. Manish Patankar, Administrative Officer, Legal Department (LIC), states that if such representation is made, without prejudice to their rights and contentions in

the present proceedings, the L.I.C. will consider the same and will not reject it on the ground that the applicants are asking for transfer of tenancy/regularisation on legal heirship basis. He further states that such decision will be taken within three months from receipt of the representation and amount of premium/transfer charges as on 31.3.1994 will be communicated to the applicants in case the L.I.C. is agreeable to regularize the tenancy. Respondent no.1 will accept the compensation, without prejudice to its rights and contentions in the present proceedings. Statements made on behalf of the applicants and respondent no.1 are accepted.

4. In view thereof, hearing of these Applications are deferred till 17.11.2015. Not to be treated as part-heard.'

It is informed that pursuant to this order party held a joint meeting and the Life Insurance Corporation had stated that the tenancy can be regularised treating Applicants as a tenant from today and Applicants should pay the rent at the market rate as of today. Applicants had refused to accept this offer on the ground that since they are claiming through Shri A.V.Patel and that even the partnership firm earlier was the family business of Applicants, their longstanding occupation has been ignored and they cannot be treated as new tenants as on date. This stand of Applicants cannot be stated to be an unreasonable one. Respondent-Corporation will have to keep in mind that it is a public authority which is seeking eviction of occupants from their premises and must act reasonably. In the present case M/s Dayabhai Nandlal and Co. was the original tenant. Even before the building was taken over by the Respondent-

Corporation, M/s Popatlal Jaisinghbhai & Company, which was the family business of Applicants was in occupation and the firm was dissolved in 1956 and the premises was allotted to late Shri A.V.Patel, whose sons the Applicants are. Therefore, the manner in which the Respondent-Corporation have proceeded to treat them as rank trespasser refusing to acknowledge the binding judicial order dated 31 March 1994, is also not a conduct befitting a public body.

22. However, even though I am inclined to set aside the orders passed by the City Civil Court and the Estate Officer, I am inclined to keep it open to the Respondent-Corporation to take suitable action within the parameters of the Act by issuing a specific notice, if the Respondent-Corporation needs the premises, or on the ground of non-occupation, to the Applicants after following the procedure laid down under the Act and Rules.

23. In the circumstances, Civil Revision Application succeeds and is allowed in terms of prayer clause (b). The order passed by the Principal Judge, City Civil Court Mumbai dated 27 April 2006 and the order dated 5 December 2001 passed by the Respondent No.5- the Estate Officer is quashed and set aside. The Applicants will pay the arrears of rent if any, pursuant to the direction dated 13 July 2015 within period of four weeks from today. It will be open to the Respondent-Corporation to accept the arrears as well as future rent

without prejudice to the rights and contentions of the Respondent-Corporation. No order as to costs.

(N.M.Jamdar, J.)