

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11551 OF 2016

Kisan Keshavrao Nagare
since deceased through his legal
heirs and representatives
1(a) Smt Laxmi Kishore Nagre & Anr.

... Petitioners
(Org. Plaintiffs)

Vs

Abbasbhai Karimbhai Dohdwalla & Anr.

... Respondents
(Org. Defendants)

.....
Mr. Balasaheb Deshmukh a/w Mr. Akash Kotecha for the
Petitioners.
Mr. Piyush Shah a/w Mr. Vijay Rajput for Respondent No.1
Mr. J.A. Madane, AGP for Respondent No.2
.....

CORAM : N. M. Jamdar, J.
Date: 14 December 2016

P.C. :

1. By this petition, the petitioners have challenged the order dated 23 March 2015 passed by the Appellate Bench of the Court of Small Causes at Mumbai rejecting the application taken out by the petitioners for an interim injunction restraining the respondents from interfering with their possession and enjoyment over the suit property during the pendency of the appeal.

2. The premises under the dispute in this suit are block No. 4, on third floor, 394, Lamington Chamber, Opposite Naaz Cinema, Lamington Road, Mumbai – 400004. The premises were requisitioned by respondent no.2 State of Maharashtra from the respondent-landlord for providing Government quarters. Original plaintiff, father and husband of the petitioners was working as Assistant Commissioner of Police, and was given quarter for his occupation. He retired on superannuation on 30 November 1989. A suit bearing R.A.D. Suit No. 786 of 1998 was filed by the plaintiff for declaring himself as a tenant of the suit premises of the respondent-landlord. The suit was dismissed. Thereafter, the present appeal was preferred. In the appeal, an application for injunction was taken out, which has been dismissed by the impugned order.

3. The learned counsel for the petitioners firstly submitted that there was an injunction in the suit throughout the proceedings, and the petitioners have made out a *prima facie* case, as the petitioners have become direct tenants of the landlord by virtue of the amendment to the Bombay Rents, Hotel and Lodging House Rates

Control Act, 1947; the Bombay Land Requisition Act, 1948; and the Bombay Government Premises (Eviction) (Amendment) Ordinance, 1997. The learned counsel submitted that the Appellate Court ought to have considered this *prima facie* case in favour of the petitioners, and injunction ought to have been continued during the hearing of the appeal. The learned counsel for the petitioners submitted that petitioner no.1(a) is of advanced age, and bed-ridden. On the other hand, the learned counsel for the respondents supported the impugned order, and relied on the decision of the Apex Court in the case of **Maheshchandra Trikamji Gajjar Vs. State of Maharashtra & Ors, reported in (2000) 3 SCC 295.**

4. It is an admitted position that the plaintiff superannuated from the service in the year 1989, much before the amendment by subsequent Ordinance of 1997 i.e. the Bombay Rents, Hotel and Lodging House Rates Control Act, the Bombay Land Requisition Act and the Bombay Government Premises (Eviction) (Amendment) Ordinance, 1997 have come into force.

5. The learned counsel for the petitioners submitted that the decision of the Apex Court in the case of **Maheshchandra** (*supra*) is not applicable to the facts of the present case, as in that case, a decree of eviction was passed against the petitioners, which is not the fact of the present case. The learned counsel for the petitioners submitted that in view of the Amendment Act, 1998, even the heirs, who are continuing in occupation being allowed by the State Government are covered as the word “allowed” by the State Government for occupation and possession, has been substituted.

6. As far as the amendment of the year 1998 is concerned, Section 4 of the Amendment Act reads thus :-

“4. Amendment of section 9 of Bom. XXXIII of 1948- In section 9 of the Bombay Land Requisition Act, 1948, in sub-section (8)-

(a) for the words “were allowed by the State Government to continue or to remain in occupation or possession of such premises” the words “were” in occupation or possession of such premises” shall be and shall be deemed to have been substituted with effect from the 7th December, 1996;

(b) in the Explanation-

(I) in clause (a) for the words “are allowed by the

State Government to remain in their occupation and possession” the words “are in their occupation or possession” shall be and shall be deemed to have been substituted with effect from the 7th December, 1996;

(ii) in clause (b), for the words “such person or his legal heir is allowed by the State Government to remain in lawful occupation or possession of such premises for his own or such legal heir's residence” the words “such person or his legal heir is in occupation or possession of such premises for his or such legal heir's own residence” shall be and shall be deemed to have been substituted with effect from the 7th December, 1996”.

7. Based on this Amendment, where it is urged that the requirement of express permission by the Government as stands deleted and occupation or possession of the heirs is enough for their claim of being tenants. The submission as advanced cannot be accepted. Though in the case of **Maheshchandra** (supra) a decree of eviction was passed, which was challenged in the present case, an injunction is sought, to achieve the same result i.e. continuation in the premises. The decision of the Apex Court cannot be distinguished only on that fact alone, as it deals with the intentions of the legislation in brining about an amendment.

8. The Apex Court after analyzing the provisions of both the Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996 and the Bombay Rents, Hotel and Lodging House Rates Control Act, the Bombay Land Requisition and the Bombay Government Premises (Eviction) (Amendment) Ordinance, 1997 observed thus :

“14. It is evident that the object was to protect those who would have been rendered homeless though still in government service on account of the shortage of accommodation with the Government and it being not possible for the Government to give suitable alternative accommodation to such government allottees. It is not and cannot be the case of the respondents that even after retirement, the Government had any obligation or policy to provide accommodation to retired employees. If the contention of Respondent 3 that he became a deemed tenant on account of the 1997 amendment is accepted, it would show that the Government intended to confer a special benefit of providing residential accommodation to occupants of requisitioned accommodation as a superannuation benefit. That is clearly not the object of the amendments. If that was so, there would be a special class of employees. A class that is allotted, while in service, with accommodation which is requisitioned which class would get the special benefit even on superannuation, this class will become tenant under the original owner after retirement with the benefits of all protections under the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. Their heirs and successors may also subject themselves to eviction

only on proof of one or the other ground of eviction provided in the Act. Thus, if one is fortunate enough to be allotted accommodation out of the requisitioned premises while in service, he gets by way of superannuation gift, the continued tenancy and others who may not be that fortunate to get allotment of such premises, will have to vacate government accommodation as per the relevant rules after retirement. We are unable to attribute such an intention to the aforesaid amendments.

15. *The deletion of the words “allowed by the State Government to remain” from clause (b) of Section 5 (1-A) by Ordinance dated 26-12-1997 also does not alter the status of an occupant like Respondent 3. The word “allowed” in the aforesaid provision may means some positive sanction and not mere slackness on the part of the competent authority in not taking action for getting the premises vacated. It is evident that the accommodation or possession of the premises within the meaning of clause (b) by a person who when allotted was a government employee has to be on account of some right to occupy or possess the premises. The continued occupation or possession without any such right would not confer on the occupant the status of a government allottee simply on account of such person being in occupation or possession of the requisitioned premises even after retirement. The reason for authorities not taking any action to get such premises vacated is explainable on account of the said premises being not available for allotment again to any existing government servant. On this account, the authorities may not initiate any proceeding for getting the possession but that would not confer on the occupant the status of “government allottee” within the meaning of the*

term as defined in the Amendment Act. Thus, assuming the amendments to be valid, we find no right in favour of Respondent 3 to continue with the possession of the premises even after the invalidity of the order of requisition dated 17-4-1958 and his retirement. Respondent 3 cannot be treated as a deemed tenant”.

9. Therefore, the Apex Court has emphasized that the object of these provisions is to ensure that Government officers who are serving with the Government, need not have to vacate the accommodation by an action taken by the landlord. However, the object is not to create a class of those Government officers, who are allotted requisitioned accommodation to get special benefit after superannuation, who will become tenants under the original owner after retirement. Nothing is placed on record that by any specific order, the State Government has permitted the present petitioners to continue of their own rights. The Apex Court has held that they were continued in occupation or possession without any such right will not confer on the occupant the status of a Government allottee, simply on account of such person being in occupation or possession of the requisitioned premises even after retirement. If this is the position of the original government servant occupant it cannot be

that the heirs will stand on a higher footing. Therefore, even the amendment of 1998 will have to be considered in consonance with the object for which the concurrent findings brought in my mind regarding the dictum of the Apex Court.

10. Considering this possession, and the argument of the advocate for the petitioners regarding the age of one of the petitioners, it was repeatedly put to the petitioners whether they are asking for longer time to vacate. However, in spite of giving various opportunities in that regard, the learned counsel for the petitioners, on instructions, has continued to contest the matter on merits to contend that they have an independent right.

11. There is no error committed by the Appellate Bench considering the chronic shortage of living space in the City, such continuation of injunctions cannot be automatic. The appellants must show some semblance of right. The writ petition cannot be entertained and is, accordingly, rejected.

12. At this stage, the learned counsel for the petitioners seeks continuation of the ad-interim order. Considering the facts and

circumstances of the case, the ad-interim order is continued for a period of 12 weeks from today on the same terms and conditions as it was granted earlier.

(N.M.Jamdar, J.)