

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12172 OF 2016

Mazgaon Co-operative Stores Ltd. ... Petitioner

Vs.

Apepllate Authority & Additional Chief Secretary
GAD, Mantralaya, Government of Maharashtra
Mumbai & Ors. ... Respondents

Mr.P.M. Gaonkar for the Petitioner
Mr.S.H. Kankal, AGP, for for Respondent-State
Mr.Imtiaz A. Naik, Chairman of Petitioner – present

CORAM: Mrs.MRIDULA BHATKAR, J.

DATE: OCTOBER 24, 2016

ORAL JUDGMENT:

1. Rule. By consent of the parties, Rule made returnable forthwith and the petition is heard finally at the stage of admission itself.

2. In this petition, the order dated 9.9.2016 passed by the Appellate Authority and the Additional Chief Secretary, General Administration Department, Mantralaya in Appeal No.1 of 2016 and the order dated 3.3.2016 passed by the Controller of Accommodation, GAD, are challenged. The petitioner society is occupying a requisitioned premises of shop as a government allottee in Khan building, Mazgaon, since 1948, under the provisions of the Bombay Land Requisition Act, 1948. In the year 1991, on 4.6.1991, the Controller of Accommodation gave notice to

the petitioner/society about the requisitioned premises informing that by its very nature, it is a temporary duration and the government cannot continue to hold the property for an indefinite period of time under the guise of requisition and demanded to hand over the vacant possession of the premises to the government. However, in the same notice, it was communicated that if the government allottees can produce No Objection Certificate or consent letter from their respective landlords for accepting them as a direct tenant, then, their tenancy can be regularised. The authority has informed the petitioner that the society may also explore the possibility of negotiating with the landlords for direct tenancy. However, it is informed that the premises is released from the requisition by 26.12.1992. The government did not act upon the said notice by evicting the petitioner but the petitioner started giving rent directly to its landlord instead of paying compensation to the government since 1993.

3. Both the Bombay Land Requisition Act and the Bombay Rent Act were amended pursuant to the policy of the government to regularise the tenancy of the government allottee, who are occupying the requisitioned premises. These amendments were subject matter of challenge before the Bombay High Court wherein the amendments were held as illegal and void. However, the Supreme court set aside the said order upholding amendment legal in 2003. Thereafter, the notices under section 8C of the Bombay Requisition Act was sent by the Government to show cause as to

why the petitioner should not be evicted. Pursuant to that, the petitioner filed his written statement before the accommodation officer and it was decided against the petitioner. Subsequently, it was challenged before the appellate authority and the additional Chief Secretary, GAD, Mantralaya directed the appellant i.e., the petitioner to hand over vacant and peaceful possession of the premises to the State Government within 30 days of the order.

4. The learned Counsel for the petitioner has submitted that the Accommodation Officer in the letter dated 6.11.1999 while asking to file affidavit before the Supreme Court in SLP has addressed the petitioner as 'Government allottee'. He further submitted that there is an inordinate delay to take steps pursuant to the notice of 1991 by the Government and, therefore, that notice is to be considered as cancelled. The learned Counsel argued that the petitioner has been occupying the said premises on or about from 1954-1955 and in 1993, society stopped giving rent to the government as per the policy of the government which was mentioned in the notice dated 4.6.1991. The learned Counsel submitted that petitioner had negotiated the terms with the landlord and the landlord has accepted the same and therefore the society started paying rent directly to the landlord and thus, at present, he is a tenant of the landlord and there is no contract between him and the government. He has rightfully occupied the said premises and the order of eviction is hence, illegal and against

the policy of the government. The learned Counsel submitted that the judgment of **H.D. Vora vs. State of Maharashtra** in **C.A. No.1212 of 1984** which is relied by the appellate authority is not applicable to the present case because the petitioner has acted according to the policy of the State of Maharashtra. He submitted that the said order is to be set aside and quashed.

5. The learned AGP, per contra, has supported the order passed by the Government. He relied on the judgment of **H.D. Vora (supra)**, and also heavily relied on the judgment of the learned Single Judge of this Court passed on 12.4.2016 in **S.A. Sule vs. The Controller of Accommodation & Ors. (Writ Petition No.2124 of 2015)**. He submitted that identical issue had come up before this Court in the **S.A. Sule's case** wherein this Court has taken a view consistent to the ratio laid down in **Vora's case (supra)** that the Government Allottee may claim that he is paying rent to the landlord and landlord may be issuing rent receipts in his favour, however, neither he be treated as a tenant nor the payment as a rent. The rent is to be considered as compensation paid by him towards requisitioned premises. He further submitted that as per the policy adopted by the State of Maharashtra as mentioned in 1991 notice, it was incumbent on the part of the petitioner to produce either a consent letter or NOC of the landlord accepting him as a tenant. However, nothing is produced by the petitioner today in the Court or at the time of hearing

before the Accommodation Officer or before the State of Maharashtra. It is admitted that on 4.6.1991, the termination notice was issued by respondent-State against the requisitioned premises occupied by the petitioner and the government did not evict the society however, he argued the allotment was terminated accordingly. The petitioner is occupying the said premises from 1993 onwards and though stopped paying rent or compensation to the government but started paying it directly to the landlord, this cannot change petitioner's status from Government Allottee to the tenant, in view of the ratio laid down in **H.D. Vora (supra)** and **S.A. Sule (supra)**.

6. Simultaneous amendments in the Requisition Act and Bombay Rent Act were introduced and added. Thus, from 7.12.1996, as per section 9(8) of the Requisition Act, the government allottees can be protected and can get themselves converted into tenant by following procedure laid down and the compliance under the policy. A protection was sought in **Sule's case** and in the said case, a notice was given to the government allottee in the year 1994 and this Court has taken a view that once the notice is given, then, the allottee becomes the person who was not allowed by the State Government to possess to remain in occupation of the premises. If notice would have been given after 1996, then, allottee falls in the category of a person, who was allowed to continue after the amendment and, therefore, he can avail of benefit under the policy. In the

case in hand (like in Sule's case), the notice was given prior to 1996 i.e., 4.6.1991 and therefore, the petitioner society is to be treated as a person not allowed to occupy the said premises. Once that notice is issued by the Government then a status of the government allottee is clear that he is a person not allowed to occupy the premises, then, that government allottee is not entitled to take benefit of the amendment of the 1996 policy though he may continue in possession till today.

7. On query of delay in taking action, the learned AGP informed the Court that though the notice was given in the year 1991, some time was given as per the order to the petitioner society and after the amendment, there was change in law by amendment on 7.12.1996. The said amendment was challenged before this Court which struck down the amendment. However, the said order was challenged in appeal before the Supreme Court and the Supreme Court restored the amendment and declared the amendment as valid. This judgment of the Supreme Court is not produced before me, however, I can accept the submissions made by the learned AGP as it is not controverted by the petitioner by placing any other order of the Supreme Court.

8. It appears that after the decision of the Supreme Court in 2003, upholding the amendment, again, a show-cause notice under section 8C was given in the year 2015. There is delay in taking action. However, that

cannot go in favour of the society, who enjoyed the occupation of the requisitioned premises till today. Such delay in taking action by government many times occurs due to omission or dishonest approach of the persons working on the system.

9. Though notice was given and eviction did not take place, benefit of the policy could have been still given to the petitioners. However, the requirement of taking benefit of the policy as mentioned in the notice dated 4.6.1991 was to produce NOC or the consent letter of the landlord, is not complied with by the petitioner society. Had the petitioner produced a consent letter or NOC of the landlord before the competent authority or government or before this Court and the benefit could have been given to the petitioner – society of the said policy which was specifically stated in its original notice of 1991. Some steps were taken by the government and there was a change in law so also the matter was *subjudice* and therefore, it cannot be said that the impugned notice is time barred. Under such circumstances, though the landlord has issued rent receipts in favour of the petitioner and the petitioner might have been addressed by the Accommodation Officer in letter dated 6.11.1999 as government allottee, it cannot continue his status throughout as government allottee. He has produced some rent receipts before the Accommodation Officer and he may be paying the rent, however, irrespective of the nomenclature, as per the ratio laid down in Vora's case (supra) and S.A. Sule's case (supra) the

amount which is paid by him is in law a compensation and cannot be treated as a rent.

10. In view of this, there is no merit in the petition and I do not find any illegality in the order passed by the State Government and hence, the petition is dismissed.

11. At this stage, the learned Counsel for the petitioner on instructions from the Chairman of the petitioner society, who is present in the Court, submits that the petitioner is a society running a rationing shop and due to Diwali season, its stocks are full and it will take some time to clear the stock. He prayed for 12 weeks time. In view of this submission, time granted upto 31.1.2017 by which time the petitioner society shall hand over vacant and peaceful possession of the premises.

(MRIDULA BHATKAR, J.)