

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

Amk

WRIT PETITION (L) NO. 2124 OF 2015

S. A. Sule

...Petitioner

Versus

State Govt. of Maharashtra & Ors.

...Respondents

.....

Mr. A. J. Jadhav i/b Vilas N. Mali for the Petitioner.

Mr. Anurag Gokhale, AGP for Respondent Nos.1, 3 & 4.

Mr. N. V. Walawalkar, Sr. Advocate a/w. Mr. V. N. Walawalkar i/b
Gajanan Shinde for Respondent No.5.

CORAM : S. C. GUPTE, J.
DATE : 12th APRIL, 2016.

P. C. :

1. This writ petition filed under Article 226 of the Constitution of India challenges an eviction order issued against the petitioner by the Controller of Accommodation which order is confirmed in appeal by the Appellate Authority and Additional Chief Secretary (G.A.D.), Government of Maharashtra.

2. The premises in dispute in present petition are Shop Nos. 4 & 5 at Mangesh Sadan, Plot No. 184, Municipal No. 246-DE, Lady Jamshedji Road, Shivaji Park, Mumbai – 400 028. Under an order passed by the Accommodation Officer/Controller of Accommodation on 25th March, 1957 the suit premises were requisitioned under the

Bombay Land Requisition Act, 1948. On 5th January, 1959 the premises were allotted to the petitioner by a letter of allotment. The petitioner is a registered co-operative society. The petitioner has been paying compensation fixed by the respondent authority directly to the landlord, subject to the production of the rent receipts periodically before the Accommodation Officer. By a communication dated 11.11.1994 the petitioner was called upon to vacate the suit premises latest by 20.11.1994, failing which it would be forcibly evicted from the premises. By a notice issued by the respondent-authority under Section 8C (2) of the Bombay Land Requisition Act, 1948 (the Act), the petitioner was asked to show cause why steps should not be taken for its eviction. Whilst the petitioner continued to occupy the premises despite the eviction order and further steps initiated by the respondent-authority, the rent control law existing in the State was amended inter alia by making government allottees in respect of requisitioned premises allotted to them for non residence purposes deemed tenants of the landlord subject to the condition that they were allowed by the State of Maharashtra to remain in lawful occupation and possession of such premises as of the cut off date of 07.12.1996. On 10.12.2012 respondent No.5, the landlord of the suit premises, filed an eviction suit against the petitioner before the Court

of Small Causes at Bombay for breach of the terms of tenancy under the provisions of Maharashtra Rent Control Act, 1999. The petitioner filed its written statement in the suit. The eviction proceedings have since been pending before the Court of Small Causes. On 22nd December, 2014, the respondent-authority issued a notice to the petitioner to show cause why the petitioner should not be evicted from the premises. The petitioner filed its reply to the show cause notice. By his order dated 22nd January, 2015, the Controller of Accommodation directed the petitioner to hand over vacant and peaceful possession of the suit premises to the State Government within a period of 15 days. That order was challenged by the petitioner in an appeal. The Appellate Authority, namely, the Additional Chief Secretary (G.A.D.), by its order dated 1st July, 2015, dismissed the petitioner's appeal and confirmed the eviction order. Being aggrieved by the Appellate order, the petitioner has preferred the present writ petition.

3. The main ground of challenge urged by the learned counsel for the petitioner is that the petitioner continued to be in occupation of the suit premises as a government allottee, the State Government allowing it to remain in occupation and possession as of the cut off date of 7th December, 1996. It is submitted that by reason

of Amendment Act 16 of 1997, which amended the provisions of the Bombay Rents, Hotel and Lodging House Rates Control and the Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Ordinance, 1996, inter alia, providing for deemed tenancy of government allottees as defined in the Amendment Act. It is submitted that on the basis of such deemed tenancy, the landlord, namely, respondent No.5 herein, has even filed an eviction suit against the petitioner in the Court of Small Causes at Bombay, which is pending before that Court. Learned counsel submits that, in the premises, the impugned order of eviction passed by the Controller of Accommodation and confirmed in appeal by the Appellate Authority is null and void.

4. The record of the case clearly indicates that the suit premises continued to be requisitioned premises as of the cut off date, namely, 7th December, 1996. It is also clear from the record that the petitioner was an allottee of the suit premises under an order passed by the Accommodation Officer on 5th January, 1959 and its use and occupation of the premises throughout had been under this allotment order. As held by the Supreme Court in the case of **H. D. Vora Vs. State of Maharashtra (1984) 2 SCC 337**, the fact that the petitioner had been paying compensation to the landlord of the premises under

the orders of the requisitioning authority, even though such compensation was termed as rent, did not have the effect of putting an end to the order of requisition. The petitioner continued to be an allottee of the subject premises under the order of acquisition and was liable to pay compensation for use and occupation of the premises to the State Government, which in turn was liable to pay compensation to the landlord. If instead of paying the compensation to the State Government and the State Government making payment of an identical amount to the landlord, by reason of the petitioner paying the amount directly to the landlord, in this case admittedly with an express assent of the State Government, the order of requisition would not cease to be valid and effective. It did not matter at all whether the petitioner described or the landlord accepted the amount paid, as rent. Whatever was done by the petitioner under the order of requisition and so long as the order stood, its possession of the subject premises is attributable only to the order of requisition and no payment, even if termed as rent, could possibly alter the nature of such occupation or make the petitioner a tenant of the landlord. That is clear and beyond doubt, having regard to the dicta of the Supreme Court in the case of **H. D. Vora** (supra).

5. What now remains to be considered is whether the

petitioner continued to be a government allottee within the meaning of Section 5(1-A) introduced the Amendment Act, 16 of 1997, which read with Section 15-B of the Bombay Rent Act provided a statutory protection to the allottees of the requisitioned premises as deemed tenants of landlords. At the outset, it is pertinent to note that the crucial words in sub-clause (a) of Clause 1-A of Section 5 in respect of allottees described therein (which includes a co-operative society such as the petitioner) are “allowed by the State Government to remain in occupation and possession”. This expression has been interpreted by the Supreme Court in the cases of **Kunal R. Chaudhari Vs. Purshottam B. Todi (1997) 9 SCC 229** and **Maheshchandra Trikamji Gajjar Vs. State of Maharashtra (2000) 3 SCC 295**. In **Kunal R. Chaudhari's** case (supra), by an order passed by the State Government, the allottee was called upon to vacate the premises and hand over the same to the government so as to enable to the government to surrender the premises. So also, there was an order passed by the State Government under Section 11(1) of the Act authorizing the Area Sub-Inspector in the office of Controller of Accommodation to take vacant possession of the premises from the allottee on or before the stipulated date. On these facts, the Supreme Court held that the authority of the allottee to occupy the premises by

virtue of the original allotment order made by the State Government had already come to an end before the date of the Ordinance, namely, 7th December, 1996, and as on that date the applicant was not a person who was “allowed by the State Government to remain in occupation and possession of such premises” and hence did not fall within the definition of 'government allottee' in Clause 1-A of Section 5 of the Bombay Rent Act and thus could not take advantage of Section 15-B of that Act. The Court held that, for the same reason, he also could not take any benefit of Sub-section (8) of Section 9 of the Requisition Act. Further, in the case of **Maheshchandra Trikamji Gajjar** (supra), the Supreme Court held that the word “allowed” in Section 5(1-A) introduced by the Ordinance meant “some positive sanction and not mere slackness on the part of the competent authority in not taking action for getting the premises vacated”. The Court held that it was evident that the occupation or possession of the premises within the meaning of Section 5 (1-A) by the occupant has to be on account of some right to occupy or possess the premises. Mere continued occupation or possession without any such right would not confer on the occupant the status of a government allottee simply on account of his being in occupation or possession of the requisitioned premises after the government withdraws his authority

to so occupy and possess the premises. The Court held that if the authorities had not initiated any proceedings for recovering the possession from the original allottee, that would not confer on the occupant the status of government allottee within the meaning of term as defined in the Act.

6. Coming now to the facts of our case, it is clear that the original authority of the petitioner to use and occupy the premises (allotment letter of 5th January, 1959) was brought to an end when the State Government issued an eviction order of 11th November, 1994. In fact, after issuance of the eviction order, the State Government also initiated further proceedings by way of notice under Section 8C (2) of the Requisition Act to show cause against his eviction. That notice and proceedings initiated thereupon were pending before the authority when the Amendment Act 16 of 1997 brought into effect the change in the law as of the cut off date of 7th December, 1996. In other words, on 7th December, 1996 the petitioner did not have any authority to occupy the premises. It was not “allowed” by the State Government to occupy the requisitioned premises. In accordance with law stated by the Supreme Court in the cases of **Kunal R. Chaudhari's** (supra) and **Maheshchandra Trikamji Gajjar** (supra), the petitioner cannot be said to be a government

allottee within the meaning of Section 5(1-A) of the Rent Act. The petitioner is, thus, not entitled to the protection of the deeming fiction within the meaning of Section 15-B of the Rent Act.

7. The order of eviction, in the premises, passed by the Controller of Accommodation and the order confirming the eviction order passed by the Appellate Authority do not suffer from any infirmity. Learned counsel for the petitioner submits that respondent No.5, landlord, had himself described the petitioner as a tenant in his eviction suit. Learned counsel for respondent No.5 submits across the bar that the description of the petitioner as a tenant and the proceedings adopted for its eviction in the Court of Small Causes were under a legal misconception of its deemed tenancy and that his client would like to withdraw the eviction proceedings. The question as to whether the petitioner is a tenant within the meaning of Section 15B read with Section 5(1-A) of the Rent Act is a mixed question of law and fact. On the basis undisputed facts borne out by the record, whether the petitioner can be described as a person who is “allowed” to occupy and possess the requisitioned premises is a matter of law. No party can be held to his pleading on a question of law. Therefore, merely describing the petitioner as a tenant and on the basis of such description filing a suit against it, does not in any way prejudice the

respondent-landlord's right for recovery of premises from the State Government under the Requisition Act. It certainly does not come in the way of State Government seeking recovery of possession of the petitioner under the Requisition Act. There is, thus, no merit in the contention of the petitioner.

8. There is no merit, accordingly, in the writ petition and the same is dismissed. No order as to costs.

9. In view of the dismissal of the petition, the order of status quo granted by this Court on 29.02.2016 is vacated.

10. On the application of the learned counsel for the petitioner, this order is stayed for a period of 4 weeks from today on the condition of the petitioner submitting an undertaking affirmed by the Chairman and Secretary of the petitioner society to vacate and hand over vacant possession of the premises to the State Government in the event the petitioner is unable to secure any further extension of the stay order from any Court. Such undertaking to be filed within a period of two weeks from today. A copy thereof shall be furnished to respondent No.5.

(S. C. GUPTE, J.)