

Mrs. Rekha Harish Kumar	}	Petitioner
versus		
The Estate Officer-4 A and Anr.	}	Respondent

Ms. Kutti Krishnan for Respondent No. 2.

DATED :- FEBRUARY 18, 2016

1) By this Petition under Article 226 of the Constitution of India, the Petitioner is challenging the communication Annexure 'O' at page 53 of the paper book.

2) By that communication, the Petitioner was informed that there was a tenement bearing No. 10/96 in Shivpragati Sahakari Gruha Nirman Sanstha, Mahavir Nagar, Kandivli (W), Mumbai 400 067. Though the Petitioner was not entitled to it, it seems that the allotment made earlier and which was found to be vitiated in law, had been regularised by the 1st Respondent authority. Now, one Mangalprasad Chaubey claiming to be the

original allottee made an application on 7th March, 2009 as well as a complaint. This Mr. Chaubey had already approached the police station. On the basis of certain investigations carried out by the police, the Estate Officer, purporting to act as a competent authority, proceeded to cancel an earlier order of 3rd April 1995 regularising the occupation and allotment of the Petitioner and directed the Petitioner to forthwith vacate and hand over vacant possession of the premises to the authority.

3) It is this order and the subsequent communication in the month of January 2016 which has forced the Petitioner's Advocate to mention this matter and request us to take it out of turn.

4) The 2nd Respondent was present in Court when the matter was mentioned. After being satisfied that it was urgent, we indicated to the 2nd Respondent that it would be taken up today.

5) We also waited for the Counsel appearing for Respondent No. 1 authority to appear before us and therefore, the matter was placed in the afternoon session.

6) Now, since all Counsel are present, with their consent, we take up the Petition itself.

7) The Petitioner claims that she is in lawful possession and occupation of the above premises. She claims that the second Respondent was a friend of her husband. Both are Ex-servicemen. They were on very good terms. Under a scheme of the authority, namely, the Maharashtra Housing and Area Development Authority (for short "MHADA") to provide residential premises to low income group persons, an allotment of the premises came to be made in favour of the 2nd Respondent Ex-serviceman. It is the claim of the Petitioner that the 2nd Respondent's application stated that he is placed under the low income group, but he was never working as a typewriter mechanic. The Petitioner accuses the 2nd Respondent of forgery and fabrication of a certificate.

8) The allotment in favour of the 2nd Respondent was made in the year 1988, but he never intended to occupy the premises or reside in Mumbai. The 2nd Respondent and his family decided to settle down in the State of Uttar Pradesh. Since the Petitioner was in dire need of housing accommodation, the 2nd Respondent, as claimed by the Petitioner, invited her husband to buy the premises and an oral understanding was arrived at between them. That is how a note of 8th December, 1988 is relied upon. The Petitioner claims that the 2nd Respondent and his family reside at Varanasi in the State of

Uttar Pradesh. While the Petitioner does not dispute that during a regular inspection of the premises when the Petitioner was found to be in possession thereof, but the allotment was seen to be in favour of the 2nd Respondent, the Competent Authority called upon both to appear before it and it resorted to Sections 65/66 of the Maharashtra Housing and Area Development Act, 1967 and passed an order of eviction on 15th February, 1991, a copy of which is at Annexure 'B'. Since the Petitioner was in possession of the premises, she applied for regularisation and claims that her occupation has in fact been regularised. In the meanwhile, the Petitioner and the 2nd Respondent fell out and the 2nd Respondent proceeded against the Petitioner. He firstly approached a police station in the month of September, 2012 and it appears that the police station investigated the case and registered a FIR against the Petitioner and her husband. The 2nd Respondent has already filed a Suit, being Suit No. 2073 of 2012 in the City Civil Court at Dindoshi, Borivli Division against the Petitioner, her husband and MHADA for a declaration and possession. The Suit, in which the Petitioner and her husband are Defendants, has proceeded to the stage of filing of Written Statement and is stated to be pending. Equally, the criminal case resulted in filing of a Charge-sheet in the Court of Metropolitan Magistrate, Borivli, Mumbai and even that criminal case is

pending.

9) It is in these circumstances that Mr. Ganwani, appearing for the Petitioner, would submit that the threat to the Petitioner of dispossession and forcibly is unsustainable in law. The communication at page 53 of the paper book, according to him refers to the complaint of the 2nd Respondent and the regularisation order passed on 3rd April, 1995. That is admittedly after the eviction order of 15th February, 1991. There is no reason assigned as to how this regularisation can be cancelled and in this manner without the 2nd Respondent establishing any right in the premises of his own. In such circumstances, he would submit that the 1st Respondent authority has exceeded its powers and has entered the arena by taking cognizance of a disputed claim. In these circumstances, he would pray that the communication be set aside and the threat of dispossession be declared as bad in law.

10) The real and contesting Respondent is the 2nd Respondent to this Petition and Ms. Kutti Krishnan appears for him. She would submit that once there is a fraud and there are serious charges of forgery and fabrication, then the complaint of the 2nd Respondent was rightly entertained and the regularisation earlier issued has been correctly cancelled. There

is no limitation or any fetter on exercise of the power by the competent authority as is complained, and belatedly. Once the competent authority is apprised of all the allegations, the investigation carried out by the local police and the Suit in the competent Civil Court and the order of injunction therein, then this communication, even if it is at the instance of the 2nd Respondent, cannot be quashed or set aside. She would submit that the Petition be dismissed.

11) After having heard both sides and perusing, with their assistance, the Petition and all Annexures thereto, what we find to be the undisputed position is that there was a certain allotment. That was initially in favour of the 2nd Respondent, but the inspection and survey of the premises revealed that the Petitioner is in physical possession thereof. Upon the physical possession of the Petitioner being termed as without permission or authority of law, the 1st Respondent proceeded to pass an eviction order, a copy of which is annexed to the Petition and the operative part of which appears at page 21. That order of eviction was final, but the Petitioner somehow approached the authority and sought a regularisation of the occupation. The communication at page 53 itself denotes that there was indeed an order of regularisation dated 3rd April, 1995. It is in that view of

the matter that the 2nd Respondent proceeded against the Petitioner in a Civil Court and also knocked at the doors of the Criminal Court. But the fact remains that both proceedings are even now pending. It is not yet established or proved that there is indeed a forgery and fabrication as alleged. Secondly, it is yet to be established that the 2nd Respondent was the original allottee and, therefore, throughout entitled to the possession of the premises or that entry by the Petitioner is impermissible and must come to an end after the order of the eviction passed against her. All these are matters that cannot be prejudged by taking over the functions of the competent Court. In our view, the competent authority had no power to assist the 2nd Respondent in this manner. Once the authority has not given effect to the order of eviction dated 15th February, 1991, but has regularised the occupation of the Petitioner in respect of the premises, then, on 2nd Respondent's version, proceedings could not have been initiated against the Petitioner. The authority should have refrained from entering the arena and should have relegated the 2nd Respondent and the Petitioner to the proceedings before the competent Court. More so when the 2nd Respondent made a complaint on 7th March, 2009, and, on the date on which the subject communication was issued, the 2nd Respondent had already approached a Civil Court and filed a Civil Suit. He had

also approached the local police station and at his instance a Charge-sheet has been filed in the competent Criminal Court. In such disputed claims and matters, the authority should have kept itself out and not assisted either parties.

12) In these circumstances, once the authority has exceeded its powers and conferred by law, then we cannot accept the request of Mr. Thorat and Ms. Kutti Krishnan that the impugned order be sustained. We, therefore, allow this Petition. We quash and set aside the impugned communication and any consequential steps or order in furtherance thereof. However, we clarify that it is only for the purpose of a scrutiny and verification of the communication with regard to its validity and authority that we have made the above observations. Our order shall not prevent the 2nd Respondent from pressing his Suit in the Mumbai City Civil Court or in the prosecution against the Petitioner and her husband in the competent Criminal Court. All these proceedings shall be completed on their own merits and in accordance with law uninfluenced by the present order.

13) We allow the Petition in the above terms. We express no opinion on the merits of the controversy.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)