

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

WRIT PETITION NO. 12687 OF 2017

Laxmi B. Metkari	]	
Adult, Indian inhabitant	]	
Residing at Sankalp Siddhi Tower	]	
A Wing, Room Nos.103 & 104,	]	
1 st Floor, E.S. Patanwala Marg,	]	
Byculla (East), Mumbai 400 027	]	... Petitioner

V/s.

1. Executive Engineer	]	
North Mumbai Division,	]	
Public Works Department	]	
Andheri (West), Mumbai 400 058	]	
	]	
2. The Competent Authority	]	
Brihanmumbai, having its office	]	
at 404, 4 th Floor D.D. Building,	]	
Old Customs House,	]	
Shahid Bhagat Singh Marg	]	
Fort, Mumbai 400 001	]	... Respondents

- Mr.Aseem Naphade i/b. Mr.Makrand P. Rege for the Petitioner.
- Ms.Kavita N. Solunke, A.G.P. for the Respondents-State.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

RESERVED ON : 11th DECEMBER, 2017.

PRONOUNCED ON : 15th DECEMBER, 2017.

JUDGMENT :

1] Rule. Rule made returnable forthwith. Heard finally with consent of learned counsel for both the parties.

2] By this Writ Petition filed under Article 227 of the Constitution of India, the Petitioner is challenging the judgment and order dated 14th September, 2017 passed by Principal Judge, City Civil Court, Mumbai in Misc. Appeal No.74 of 2017 filed under Section 7 of Bombay Government Premises (Eviction) Act, 1955 and the order dated 9th October, 2017 passed in Review Petition No.23 of 2017.

3] By the first order, learned Appellate Court has confirmed the order of eviction passed by the Competent Authority and by the second order, it has dismissed the Review Petition filed by the Petitioner.

4] It is not in dispute that the inquiry premises which is a commercial premises situated at Mudran Kamgar Nagar, J.P. Road, Andheri (West), Mumbai, where the Petitioner is running the flour mill business, were given to her under a lease-deed dated 13th June, 1981. The said lease-deed was renewed from time to time until 28th September, 2004, on which date the lease had expired. Thereafter, the Petitioner had made several requests to the Government for renewal

of the lease. The said requests were, however, not acceded to.

5] On 20th December, 2016, a show-cause-notice was issued to the Petitioner, “as to why she should not be evicted from the premises on the ground that the lease had expired and as such she has become unauthorized occupant and further the premises are also required for the purpose of the Government”. The Petitioner appeared before the Competent Authority and filed her reply on 10th January, 2017, contending *inter-alia* that, as she is in occupation of the premises for almost 30 years by paying the rent regularly, she cannot be termed as unauthorized occupant. Other contentions like equity, Petitioner being a widow were also raised in the reply and thus, request was made to withdraw the show-cause-notice.

6] After hearing the both the sides, the Competent Authority was pleased to pass the order of eviction, which came to be challenged before the Appellate Court on the ground that the order was passed without following principles of natural justice, in as much as no opportunity of hearing was given to the Petitioner. It was further contended that the said order was contrary to the policy decision taken by the Government on 17th April, 2017; whereby it has been decided that until the final decision is taken in respect of renewal of

lease agreement, no action of eviction should be taken in respect of the lease premises in the area of Bandra (West) merely on the ground that lease period has expired.

7] On behalf of the Respondent, it was denied that there was violation of principles of natural justice. It was submitted that the Petitioner was served with show-cause-notice. She has filed her reply. She was heard in the matter and thereafter only the order came to be passed. It was further submitted that the lease in respect of premises in question has expired long back in the year 2004 and the reply filed by the Petitioner to the show-cause-notice does not dispute that fact of requirement of the premises for the purpose of Government. The documents to the effect that in respect of the area under the premises a contract has been awarded for construction of "Udyog Bhavan" and the lay-out plan for the same was sanctioned, were also produced to show that the eviction order passed by the Competent Authority needs to be confirmed.

8] As far as the policy decision of the Government was concerned on which the Petitioner has placed reliance, it was stated that the said policy decision was applicable only to residential premises of slum dwellers situate in Bandra area and it was not applicable to the premises of the Petitioner, which were commercial

premises, situate in Andheri (West).

9] On the basis of these rival contentions, the learned Appellate Court framed necessary points for its consideration and was pleased to hold that the possession of the Petitioner in the premises had become unauthorized on the receipt of the service of notice. It was further held that the principles of natural justice were properly followed in the case and hence, there was no substance in the grievance raised by the Petitioner on that count.

10] As regards the policy decision of the Government dated 17th April 2017, it was held that it was not applicable to the premises of the Petitioner as the said policy was applicable to hutment dwellers in Bandra area; whereas the Petitioner's premises are situated in Andheri area and they are commercial premises. Accordingly, learned Appellate Court confirmed the order of eviction passed by the Competent Authority on 14th September, 2017.

11] The Petitioner, thereafter, moved the Review Petition No.23 of 2017 before the Appellate Court on 5th October, 2017 contending *inter-alia* that the Petitioner has come across the letter dated 1st August, 2017, containing the policy decision taken by the Government that “no action of eviction would be taken in respect of

commercial premises situate in Andheri merely because the agreement for lease has come to an end". In view of this letter, it was submitted by the Petitioner that it is a new and important fact which needs to be considered and as the only ground on which the order of eviction was passed by the Competent Authority was that the lease of the Petitioner's premises has come to an end, in the light of this policy decision taken by the Government, the eviction proceedings cannot be taken against her and hence order of eviction is liable to be set-aside.

12] The learned Appellate Court was however pleased to reject this contention on the ground that this letter dated 1st August, 2017 was very much in possession of the Petitioner as she has received the same on 10th September, 2017 i.e. before her appeal came to be dismissed on 14th September, 2017 and therefore, it cannot be accepted that it was not within her knowledge, even after exercise of due diligence. It was held that on this sole ground itself Review Petition made was not tenable.

13] Secondly, it was held that in the instant case, the order of eviction was passed not only on the ground that the lease has expired but also on the ground that the premises are required by the Government and this fact was not disputed by the Petitioner in her reply to the show-cause-notice. In view thereof, the learned Appellate

Court held that no ground for review is made out and accordingly dismissed the Review Petition.

14] While challenging this order of learned Appellate Court, the submission of learned counsel for the Petitioner is that except for making a tick-mark to the ground that the premises are required for the Government purpose, the show-cause-notice dated 20th December, 2016 is conspicuously silent about the purpose for which they are required. Even the impugned order of eviction passed by the Competent Authority also does not discuss or even refer to this ground of the premises being required for the Government purpose. It is submitted that only at the time of hearing of the appeal this ground was advanced and some documents were tried to be produced. Thus, it is submitted that the Government is changing its stand from time to time. Initially it was contended that the policy decision dated 17th April, 2017 of not evicting the persons merely on ground of expiry of leased agreement was applicable to the residential premises situated at Bandra (East), Mumbai.

15] Thereafter, when the Petitioner produced on record a letter dated 1st August, 2017 showing the policy decision taken by the Government that no eviction proceedings should be initiated against the authorized gala holders situated in Bandra (East), Mumbai only on

the count of expiry of the lease period, till the final decision in the said behalf is taken by the Government, now the Respondent has taken a stand that this letter is not applicable to those gala holders who have also committed the breach of conditions of the agreement and for that purpose in this Writ Petition, the letter dated 1st November, 2017 is produced to that effect. It is thus urged that the Respondent has changed its stand from time to time just to defeat the equitable claim of the Petitioner. The Petitioner is entitled to be treated on equal footing like other gala holders in the same area and hence now entirely new ground is tried to be made out in Affidavit-in-Reply filed on behalf of the Respondent Executive Engineer by Anita Pardeshi in this Writ Petition that the premises of the Petitioner are required for the implementation of the Government project of "Udyog Bhavan". It is submitted that, it is totally a new ground, which was neither stated before the Estate Officer nor before the Appellate Court by filing Affidavit-in-Reply. Thus, according to learned counsel for the Petitioner, as the Appellate Court has rejected the Petitioner's Review Petition on the ground that the premises are also required for the development of "Udyog Bhavan", the said order needs to be quashed and set-aside, as the Competent Authority has not passed eviction order on that ground.

16] Per contra, learned A.G.P. for the Respondents has supported the impugned order by submitting that in the show-cause-notice, the ground that the premises are required for the Government purpose was clearly tick-marked and therefore, the Petitioner was very much aware of the said ground. Even the perusal of the judgment of the Appellate Court shows that this ground was advanced in the course of argument by placing on record the documents pertaining to the project of the Government and lay-out plan showing that the premises is causing hindrance in the implementation of the said project. Thus, it is submitted that this is not a new ground which is being made out and if this ground is to be accepted then the policy decision communicated by letter dated 1st August, 2017 cannot be of any help to the Petitioner. Reliance is also placed on the letter dated 1st November, 2017 to submit that if the gala holders had committed the breach of terms and conditions of the lease agreement, then they will not be entitled to get the benefit of the policy decision communicated by letter dated 1st August, 2017.

17] In order to appreciate the rival contentions raised by learned counsel for the Petitioner and learned A.G.P., first and foremost, this Court has to go to the show-cause-notice issued to the Petitioner on 20th December, 2016. It is in printed proforma containing

the various grounds, as laid down in Section 4 of the Bombay Government Premises (Eviction) Act. It contains only 5 grounds and out of them, 3 grounds are tick-marked therein. Those grounds are as follows:

- “i) Agreement of lease is expired and therefore, the possession of the Petitioner is become unauthorized.*
- ii) The period of lease has expired hence the possession has become unauthorized and*
- iii) The premises are required for the Government purpose.”*

18] Thus in the show-cause-notice the fact that the premises are required for the Government purpose is only tick-marked. However, it is not elaborated as to for which Government purpose the premises are required and therefore, it appears that in his reply, the Petitioner has not challenged this ground that the premises are required for the Government purpose. He has only given reply relating to the ground of his being in arrears of rent and stating that he has applied repeatedly for extension and renewal of the lease period.

19] The impugned order passed by the Competent Authority also goes to show that the Competent Authority has considered only the ground of non payment of rent and non renewal of the lease agreement and held that, on that count, the Petitioner's possession

has become unauthorized. The Competent Authority has then considered the policy decision dated 17th April 2017, on which the Petitioner has relied upon, that of the slum dwellers in the Bandra area are not to be evicted merely because the lease period has expired. It was held that the said letter is in respect of the residential premises of the slum dwellers in Bandra area and cannot be applicable to the commercial premises of the Petitioner situate in Andheri. The entire order of the Competent Authority is conspicuously silent as to the ground of the premises being required for the purpose of Government project.

20] It is pertinent to note that in the appeal also the Petitioner has challenged the order of the Competent Authority in respect of the findings recorded by it, namely, pertaining to arrears of rent and non renewal of the lease agreement. What is surprising to note is that in the appeal, no reply in affidavit was filed by the Respondent to contend or to bring on record that apart from the ground of non renewal of lease or non payment of rent, the ground of premises being required for Government purpose is also required to be considered. As can be seen from paragraph 13 of the impugned judgment of the Appellate Court, only at the time of argument, additional contention was raised regarding the requirement of the Government and for that purpose

some documents were placed on record pertaining to the project of the Government and lay-out plan showing that the premises of the Petitioner were causing hindrance in implementation of that project. The Appellate Court has not dealt with those documents, may be because the said ground was not considered by the Competent Authority.

21] However, when the Petitioner in his Review Petition pointed out the letter dated 1st August, 2017 showing that the policy decision has been taken by the Government that no action would be taken in respect of the lease premises merely because the agreement for lease has come to an end, the Appellate Court considered that this letter is not of help to the Petitioner as he would not be covered by the policy decision in view of the fact that the Respondent, on the basis of the documents showed that a contract was awarded in respect of construction of “Udyog Bhavan” on the premises of which a part is occupied by the Petitioner and that premises was causing hindrance in the said development. It was held by the Appellate Court that as in the instant case the expiry of the lease is not the sole ground, the policy decision dated 1st August, 2017 will not be of benefit to the Petitioner.

22] In paragraph No.5 of its order in Review Petition, the Appellate Court, however, accepted the fact that before the Competent Authority the proceedings for eviction were initiated solely on the ground that lease period had expired and Applicant had become unauthorized occupant. Thus, the Appellate Court has also categorically held that the ground that the premises were also required for the purpose of the Government project was not at all considered by the Competent Authority and the Competent Authority has passed the order of eviction only on the ground that lease period had expired.

23] Now the question for consideration is whether the ground which is not considered by the Competent Authority that of premises being required for the Government project can be accepted in the appeal and on that count the benefit of the policy decision dated 1st August, 2017 can be denied to the Petitioner. In this respect, learned counsel for the Petitioner has rightly placed reliance on the judgment of the Apex Court in the case of *Mohinder Singh Gill vs. Chief Election Commissioner, New Delhi & Ors.*, (1978) 1 SCC 405, wherein paragraph (8), the Hon'ble Apex Court was pleased to observe as follows:

"8. The second equally relevant matter is that when a

statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought ,out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji (1) "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in mind, or what he intended to, do. Public orders made by public authorities are meant to have public effect and are intended to effect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older."

24] Thus, the legal position is very well settled in view of the decision of the Apex Court that when a statutory functionary has made an order based on certain ground, its validity must be judged on the ground so mentioned and cannot be supplemented by fresh ground in the shape of affidavit or otherwise. In other words, the orders publicly made in exercise of statutory authority cannot be construed

in the light of explanations subsequently given by the officer making the order, of what he meant or of what was in his mind or what he intended to do. Otherwise, an order which is bad in the beginning may by the time it comes to the Court on account of a challenge, get validated by additional grounds latter brought out.

25] In the instant case, the only ground on which the Competent Authority has passed the order of eviction is that the lease period has expired and therefore, the possession of the Petitioner has become unauthorized. The ground of the premises being required for the Government project was neither advanced in enquiry before the Competent Authority nor it was considered by the Competent Authority.

26] In such situation whether that ground which was vaguely tick-marked in the printed show-cause-notice can be advanced as additional ground for eviction of the Petitioner; especially, when, as pointed out, the policy decision of the Government contained in the letter dated 1st August, 2017 states that no action would be taken in respect of the leased premises merely because the agreement for lease has become to an end. The Petitioner's premises are squarely covered under that policy decision as the Competent Authority has passed the

order of the Petitioner's eviction only on the ground that lease period has expired. There is nothing in the order passed by the Competent Authority to show that the Petitioner has committed the breach of any terms and conditions of the lease-deed or the premises were required for the purpose of Government. Even in the appeal, no Affidavit-in-Reply was filed on behalf of the Respondent to show that this ground was considered or was applicable in respect of the premises in question.

27] In that view of the matter, even the letter dated 1st November, 2017 on which reliance is placed in this Writ Petition cannot be of much help to the Respondents because as per the said letter, the policy decision of 1st August, 2017 will not be applicable to those premises where there is breach of the terms and conditions of the lease agreement. Here nothing is brought out in the order of even the Competent Authority to show that there was breach on the part of the Petitioner in respect of the lease agreement. The only ground on which therefore eviction order is passed is that of the expiry of the lease and on that sole ground the Petitioner cannot be evicted, in view of the subsequent policy decision taken on 1st August, 2017.

28] In this context, learned counsel for the Petitioner has also

relied upon the judgment of the Apex Court in the case of *Minoo Framroze Balsara vs. The Union of India & Ors.*, AIR 1992 Bom.375, wherein paragraph No.40, it was held that under Section 4 of the Act, “*the Estate Officer may arrive at an opinion that the person is in unauthorized occupation of public premises and that he should be evicted*”. Both these conditions are essentially to be proved. Therefore, Estate Officer i.e. Competent Authority has to arrive at a finding that not only the Petitioner is in unauthorized occupation but further that the Petitioner needs to be evicted on this ground that the premises of the Petitioner are required for the Government project. No such finding is arrived at by the Competent Authority in this case.

29] In such situation, there is much substance in the submission advanced by learned counsel for the Petitioner that, if the Petitioner is entitled to the benefit of policy decision dated 1st August, 2017, then the Respondents have to make out the further ground that Respondents require the premises for Government purpose. As no such finding is arrived at by the Competent Authority, the matter needs to be remanded to the Competent Authority for taking a decision afresh.

30] In view thereof, this Writ Petition is allowed. The impugned

orders passed by the Appellate Court 14th September, 2017 and 9th October, 2017 are set-aside. The matter is remanded to the Competent Authority for initiating fresh action against the Petitioner on the grounds which may be available for it, including the ground that premises are required for the purpose of the Government.

31] Rule is made absolute in above terms.

32] Writ Petition is accordingly disposed of.

[DR.SHALINI PHANSALKAR-JOSHI, J.]