

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

WRIT PETITION NO.2888 OF 2011

1. Shri Anil Manilal Sanghvi)
84, Irla Bridge, S.V. Road,)
Andheri (W), Mumbai- 400 058.) .. Petitioner

Versus

1. Sau. Devika Dhananjay Gokhale)
Room No.26, 3rd Floor, Chhotani Bldg.)
93-95, Sun Mill Lane,)
Lower Parel, Mumbai - 400 013.)

2. Controller of Accommodation)
Office of the Controller of)
Accommodation Department,)
General Administrative Department)
Government Barack No.8,)
Free Press Journal Marg,)
Mumbai - 400 021.)

3. State of Maharashtra) .. Respondents

Mr.R.M.Haridas for the petitioner.

Mr.Prashant G. Karande for the respondent no.1.

Mr.S. H. Kankal, AGP for the respondent nos.2 & 3-State

CORAM : R.D. DHANUKA, J.
RESERVED ON : 27th March 2018
PRONOUNCED ON : 26th April 2018

Judgment :

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the orders dated 9th August 2010 and 10th August 2010 passed by the competent authority i.e. the respondent no.2 thereby giving vacant the possession of the premises i.e. Room No.26, 3rd Floor, Chhotani Building, 93-95, Sun Mill Lane, Lower Parel, Mumbai 400 013 to the respondent no.1 and seek an order and direction against the respondent no.2 to hand over the possession of the said premises to the petitioner by evicting the respondent no.1.

2. Rule. Mr.Karande, learned counsel appearing for the respondent no.1 waives service. Mr. Kankal, AGP appearing for the respondent nos.2 and 3 waives service. By consent of parties, the petition is heard finally. Some of the relevant facts for the purpose of deciding this petition are as under :-

3. The petitioner is the landlord of the Chhotani building situated at 93-95, Sun Mill Lane, Lower Parel, Mumbai. Father-in-law of the respondent no.1 i.e. Mr.Nilkanth Balkrishna Gokhale was the government allottee of the State of Maharashtra who had requisitioned the said premises i.e. Room No.26, 3rd Floor, Chhotani Building, 93-95, Sun Mill Lane, Lower Parel, Mumbai 400 013 (for short “the said premises”) under the provisions of the Bombay Land Requisition Act, 1948 (for short “the said Act”) and allotted the same to the said Mr.Nilkanth B. Gokhale. During the lifetime of the said Mr.Nilkanth B. Gokhale, the competent authority passed an order directing the said

Mr.Nilkanth B. Gokhale to hand over the possession of the said premises. The said order was challenged by the said Mr.Nilkanth B. Gokhale by filing an appeal before the Appellate Authority. The said appeal was however rejected by the Appellate Authority. The said Mr.Nilkanth B. Gokhale was paying compensation to the Rent Collector appointed by the petitioner on behalf of the State of Maharashtra as the premises was allotted by the State Government. Some time in the year 1993, the said Mr.Gokhale retired from service.

4. Supreme Court thereafter passed an order pursuant to which the competent authority issued an order dated 9th September 2008 for eviction of occupants of the said premises and took its possession on 22nd September 2008. The possession of the said premises was taken by the competent authority from the then occupants of the said premises. The order of eviction passed by the competent authority and challenged by the said Mr.Nilkanth B. Gokhale was upheld. The said premises after recovering possession from the legal heirs of the said Mr.Nilkanth B. Gokhale, however, continued to be in possession of the Controller of Accommodation upto 12th August 2010.

5. It is the case of the respondents that the fact of recovering the possession of the said premises from the legal heirs of Mr.N.B. Gokhale was informed to the landlord by the competent authority vide their letter dated 3rd October 2008. This case of the respondents is disputed by the petitioner.

6. It is the case of the respondents that the petitioner however

continued to recover the rent from the respondent no.1 in respect of the said premises from July 2008 to April 2010 which payment was made by cheque by the respondent no.1 and was collected by the Rent Collector by the petitioner. The Rent Collector of the petitioner also issued a rent receipt in favour of the respondent no.1 for the said period. It is the case of the respondent no.1 that the said Mr.N. B.Gokhale was though the government allottee, he was treated as a tenant by the petitioner even after retirement. By an order dated 9th August 2010, the said premises was de-requisitioned and its possession was restored to the respondent no.1 vide an order of Controller of Accommodation dated 10th August 2010.

7. On 14th May 2008 and 3rd October 2008, State of Maharashtra called upon the petitioner to produce the proof of his ownership. In the said letter, it was recorded that forcible possession of the said premises was taken by the Government of Maharashtra.

8. On 11th January 2011, the petitioner herein filed this writ petition inter alia praying for quashing and setting aside the orders dated 9th August 2010 and 10th August 2010 passed by the competent authority and for possession of the suit premises from the respondents and for other reliefs.

9. Some time in the year 2011, the respondent no.1 filed a Declaratory Suit (Rent Act Declaratory Suit No.1505 of 2011) against the petitioner in respect of the suit premises in the Court of Small Causes at Mumbai. This writ petition appeared on board on 30th March 2012. This

Court observed that the arguable questions are raised about the competence of the State Government to pass the impugned order dated 9th August 2010 and the subsequent order dated 10th August 2010. This Court observed that prima facie in terms of the judgment of the Supreme Court in the case of ***Maheshchandra Trikamji Gajjar Vs. State of Maharashtra & Ors., (2000) 3 SCC 295***, the original allottee would be entitled to the protection of the Amended Act whereby the Bombay Rent Act, the Bombay Land Requisition Act and Bombay Government Premises (Eviction) Act were amended w.e.f. 7th December 1996. The validity of the said Amended Act has been upheld by the Supreme Court in the case of ***Welfare Association ARP Maharashtra & Anr. Vs. Ranjeet P. Gohil & Ors., AIR 2003 SC 1266***. This Court observed that however in this case, it is the case of the respondent no.1 that the landlord had directly accepted the rent for various periods commencing from February 2005 till April 2010 and on that basis, the impugned orders have been passed.

10. At that stage the suit filed by the respondent no.1 i.e. RAD Suit No.1505 of 2011 in the Court of Small Causes at Mumbai was pending. In view of these peculiar facts and by way of interim order, this Court directed that the said RAD suit shall be heard and disposed of expeditiously and in any case on or before 30th June 2013. It was made clear that depending upon the out come of the said suit, further appropriate orders can be passed in this petition. This Court accordingly issued a notice for final disposal returnable in the first week of July 2013.

11. By a judgment and decree dated 26th June 2015, the Small Causes Court at Mumbai dismissed the said RAD Suit No.1505 of 2011 filed by the respondent no.1 against the petitioner and others. The respondent no.1 has preferred an appeal (273 of 2016) against the said judgment and decree dated 26th June 2015 before the Appellate bench of the Small Causes Court. The said appeal is admitted and is pending for hearing and final disposal.

12. Mr.Haridas, learned counsel appearing for the petitioner invited my attention to various annexures to the writ petition including the order dated 9th September 2008 passed by the Controller of Accommodation which referred to the order passed by the Supreme Court in the Civil Appeal No.2026 of 2000 and based on the said judgment, State of Maharashtra had decided to take forcible possession of requisitioned premises. By the said order, the Government allottee of the requisition premises were directed to take out their all the household belongings from requisition premises on or before 22nd September 2008 to enable the State Government to take vacant and peaceful possession of the said premises. It is the case of the petitioner that the petitioner did not receive the said copy of the order dated 9th September 2008.

13. It is submitted by the learned counsel that the said Mr.Gokhale was allotted the said premises by the competent authority under the provisions of the Bombay Land Requisition Act, 1948 when the said Mr.Gokhale was a government employee. The said Mr.Gokhale did not have any right in the said premises except being a government allottee as per the Bombay Land Requisition Act, 1948. The said

Mr.Gokhale had already retired from service prior to 1993. The competent authority had passed an order of eviction dated 15th February 1993 thereby directing the government allottee to hand over vacant and peaceful possession of the said premises within a period of 30 days. It is submitted that the said Mr.Gokhale had no right to continue or occupy the said premises after his retirement and in any event after an order of eviction dated 15th February 1993 was passed by the competent authority. The appeal preferred by the said Mr.Gokhale against the order of eviction passed by the competent authority came to be dismissed which order was confirmed by the Appellate Authority.

14. Supreme Court had passed an order in the Civil Appeal No.2026 of 2000 on the basis of which the competent authority had passed an order to take forcible possession of the said premises on 22nd September 2008. The Controller of Accommodation had accordingly taken forcible possession of the said premises from the then occupants of the said premises and continued to retain the possession thereof till April 2010. It is submitted that the order of de-requisition of the premises passed by the competent authority has been upheld by the Supreme Court. Since the original allottee had no right, title and interest of any nature whatsoever, the proceedings filed by him were rejected all throughout, the respondent no.1 being a daughter-in-law of the said Mr.Gokhale could not have independent right in respect of the said premises from the petitioner.

15. Learned counsel for the petitioner in his alternate submission relied upon the portion of the oral evidence led by the respondent no.1 in

the RAD Suit No.1505 of 2011 filed in the Small Causes Court at Mumbai and various findings and observations made by the Small Causes Court in the RAD suit against the respondent no.1 while dismissing the said RAD suit.

16. It is submitted by the learned counsel for the petitioner that Small Causes Court has categorically rendered a finding against the respondent no.1 that she was not a tenant in respect of the said premises. It is submitted that the respondent no.1 has not been even residing in the said premises and has been permanently staying at Thane. No rent receipt was admittedly issued in favour of the respondent no.1 either by the petitioner or even by the Rent Collector appointed by the petitioner. The respondent no.1 did not take any steps to impugn the alleged forcible possession of the said premises by the competent authority.

17. Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in the case of **Grahak Sanstha Manch and Ors. Vs. State of Maharashtra** reported in **(1994) 4 SCC 192**. Learned counsel also placed reliance on the affidavit-in-reply filed by the respondent nos.2 and 3 and more particularly paragraph 3 admitting that in view of the order dated 9th August 2010 passed by the Controller of Accommodation under Section 9(1) and 9(3) of the Bombay Land Requisition Act, 1948 de-requisitioning the said premises, it was an obligation of the authority to deliver the possession to the petitioner. The Section Officer of the Controller of Accommodation, Mumbai, however, addressed a letter dated 10th August 2010 to the respondent no.1 asking her to obtain possession of the said premises from the

Government.

18. It is submitted that the said letter does not mention, under which provision of law, the said letter was addressed to the respondent no.1 and the same was contrary to the directions issued in the order dated 9th August 2010 passed by the competent authority under the provisions of the Bombay Land Requisition Act, 1948. It is submitted that the Controller of Accommodation already having taken possession of the said premises from the family members of the said Mr.Gokhale, could not have handed over possession back to the respondent no.1 illegally. The possession of the premises ought to have been handed over to the petitioner in view of the admitted fact that the said premises was de-requisitioned.

19. It is submitted that there is no provision under the said Bombay Land Requisition Act, 1948 under which the Government could give possession to a third party after order of de-requisition could be passed. The respondent no.1 could not have claimed possession directly from the Controller of Accommodation or from the competent authority. The Controller of Accommodation had first handed over possession of the said premises to the respondent no.1 illegally and thereafter had informed the petitioner about such handing over possession to the respondent no.1. It is submitted that since Mr.Gokhale did not have right, title and interest of any nature whatsoever in the said premises, the respondent no.1 could not claim any right, title and interest in the said premises either as a occupant, tenant or otherwise.

20. Learned counsel for the petitioner invited my attention to the observations made in the impugned order dated 9th August 2010 and would submit that the respondent no.1 did not claim any right, title and interest in the said premises independently. The respondent no.1 having taken such stand, the impugned order dated 9th August 2010 passed by the Controller of Accommodation deserves to be set aside on this ground alone. The stand taken by the respondent no.1 now is that the respondent no.1 is claiming independent right in the said premises which is contrary to the letter of the respondent no.1 to the Controller of Accommodation seeking possession.

21. It is submitted that the definition of 'tenant' would not apply to the respondent no.1 in view of the fact that the respondent no.1 is admittedly now not claiming through her father-in-law i.e. Mr.N.B.Gokhale, original allottee. The provision of the Bombay Land Requisition Act, 1948 does not provide for handing over possession by the competent authority or Controller of Accommodation to a third party or even to a tenant.

22. It is submitted by the learned counsel that the respondent no.1 has made a fraudulent claim in respect of the said premises which has already been de-requisitioned which order has attained finality. Even this Court takes the cognizance of fact that the appeal filed by the respondent no.1 against the decree passed by the Small Causes Court is still pending, this Court may direct the respondent no.1 to hand over possession of the said premises to the petitioner which may be subject to the outcome of the appeal filed by the respondent no.1.

23. Mr.Karande, learned counsel for the respondent no.1, on the other hand, submits that this Court had initially adjourned this writ petition on the ground that the declaratory suit filed by the respondent no.1 in respect of the said premises was pending in the Small Causes Court at Mumbai. He submits that the respondent no.1 has already preferred an appeal against the said decree passed by the Small Causes Court, Mumbai and the same is admitted and is pending for hearing and final disposal. He submits that the findings rendered by the Small Causes Court, Mumbai in the said suit filed by the respondent no.1 as well as the oral evidence recorded by the said Court cannot be thus relied upon by the petitioner and cannot be considered by this Court in this writ petition.

24. Learned counsel for the respondent no.1 placed reliance on the notification published in the Maharashtra Government Gazette dated 20th June 1981 in exercise of the powers conferred by Section 8B of the Bombay Land Requisition Act, 1948 appointing various officers for the purpose of carrying out provisions of the said Act. He also placed reliance on the Ordinance issued by the State Government which was published in the Maharashtra Government Gazette dated 7th December 1996 thereby amending various provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, Bombay Land Requisition Act, 1948 and the Bombay Government Premises (Eviction) Act, 1955.

25. It is submitted that the original allottee, father-in-law of the respondent no.1 was issued rent receipts in respect of the said premises even after an order of de-requisition under the provisions of the said Act

which amounts were paid by the respondent no.1. He submits that those rent receipts were admittedly issued from February 2005 till April 2010. The respondent no.1 is thus not claiming any rights in the said premises through her father-in-law but has been claiming as an independent right. When the Controller of Accommodation has taken forcible possession on 3rd October 2008, the same was forcibly taken from the respondent no.1. The respondent no.1 was thus entitled to restoration of the possession of the said premises from the Controller of Accommodation. The Controller of Accommodation was justified in restoring the possession of the said premises to the respondent no.1, having been found that the same was forcibly and illegally taken from her by the Controller of Accommodation.

26. Learned counsel for the respondent no.1 invited my attention to the averments made in paragraph 7 of the petition and would submit that the petitioner has taken contradictory stand. It was not the case of the petitioner that the letter dated 14th May 2008 was not received by the petitioner from the Controller of Accommodation. The petitioner had accepted the cheques from the respondent no.1 even for the period when the premises were in possession of the Controller of Accommodation i.e. even after 3rd October 2008. Such issue of tenancy thus raised by the respondent no.1 could be decided by the Small Causes Court at Mumbai and not by the Controller of Accommodation. He placed reliance on the letter dated 10th August 2010 addressed by the Desk Officer to the respondent no.1 with a copy of pre-decessor of the petitioner and would submit that the petitioner was fully aware of the action initiated by the Controller of Accommodation.

27. Learned counsel for the respondent no.1 placed reliance on the judgment of the Supreme Court in the case of Delta International Ltd. Vs. Shyam Sundar Ganeriwalla & Anr., AIR 1999 SC 2607 and in particular paragraph 15 in support of the submission that the respondent no.1 had already satisfied the test of creation of tenancy and thus the respondent no.1 has good chances of succeeding in appeal filed before the Appellate Bench of Small Causes Court, Mumbai. He submits that the petitioner has not disputed the issuance of tenancy receipt by the Rent Collector in favour of the father-in-law of the respondent no.1 or that the rent was paid by the respondent no.1 from her bank account to the petitioner.

28. It is submitted that the affidavit filed by the respondent nos.2 and 3 cannot be considered by this Court which is contrary to the order passed by the Controller of Accommodation. He submits that in any event, the deponent of the said affidavit has expressed his personal opinion about the impugned order and thus is not binding on the parties as well as this Court. He submits that the said officer who has filed affidavit-in-reply in this proceeding had already retired much earlier and had himself passed the said impugned order when he was in service. The said retired officer had also given oral evidence in the suit filed by the respondent no.1 as witness of the petitioner and thus the said affidavit cannot be considered.

29. Mr.Haridas, learned counsel for the petitioner in rejoinder submits that merely because the respondent no.1 has claimed to have paid

rent for part of the period when the father of the respondent no.1 was in possession of the suit premises and even thereafter would not create any tenancy in respect of the suit premises in favour of the respondent no.1. It is not the case of the respondent no.1 that any rent receipts were issued by the Rent Collector in favour of the respondent no.1 at any point of time. He submits that the plea of the respondent no.1 that she was tenant in respect of the suit premises has been negated by the Small Causes Court. He submits that the respondent no.1 does not dispute even before this court that she has been staying at Thane permanently. Learned counsel distinguished the judgment of Supreme Court in case of ***Delta International Ltd.*** (supra) relied upon by the learned counsel for the respondents on the ground that the Small Causes Court has already held that the respondent no.1 has failed to have established her alleged tenancy in respect of the suit premises. There were no documents placed on record by the respondent no.1 in respect to her alleged tenancy before the Small Causes Court.

30. It is submitted that after the death of the father in law of the respondent no.1, she continued to pay rent even during the period when the premises were in possession of the Controller of Accommodation to the rent Collector with an ulterior motives and with an intention to create record. The respondent no.1 however did not dispute that all rent receipts were issued by the receipt collector in the name of the father-in-law of the respondent no.1. Learned counsel for the petitioner placed reliance on the judgment of Supreme Court in case of ***Bhuneshwar Prasad & Anr. vs. United Commercial Bank & Ors., (2000) 7 SCC 232*** in support of his submission that merely because that Rent Collector of the petitioner has

collected any rent from the respondent no.1, no fresh tenancy has been created. He submits that the State Government did not inform the petitioner about the de-requisition of the suit property.

REASONS AND CONCLUSIONS

31. It is not in dispute that the petitioner is the owner of the building viz. Chhotani Building situated at Lower Parel, Mumbai. Mr.Nilkanth Balkrishna Gokhale was a government employee. The suit premises i.e. Room No.26, 3rd Floor, Chhotani Building, 93-95, Sun Mill Lane, Lower Parel, Mumbai 400 013 was requisitioned by the State Government under the provisions of Bombay Land Requisition Act, 1948. The suit premises was allotted to the father-in-law of the respondent no.1 i.e. Mr.Nilkanth B.Gokhale during the period when he was an employee. It is not in dispute that during the lifetime of the said Mr.Nilkanth B.Gokhale, vide an order dated 15th February, 1993 he was asked by the Controller of Accommodation to hand over the possession of the suit premises. The said order was admittedly challenged by the said Mr.Nilkanth B.Gokhale by filing an appeal before the appellate authority. The said appeal is admittedly rejected.

32. On 9th September,2008, the Supreme Court directed the competent authority to evict the occupants of the suit premises. The said order was complied with the competent authority and the possession of the suit premises came to be taken on 22nd September,2008. It is the case of the petitioner that the petitioner was not informed about the factum of taking forcible possession by the Controller of Accommodation from the

occupants of the suit flat. On the other hand it is the case of the respondent no.1 that the fact or recovery of the possession from the heirs of Mr.Nilkanth B.Gokhale was informed to the petitioner by a letter of the competent authority dated 3rd October,2008.

33. A perusal of the record further indicates that it is the case of the respondent no.1 that even though the suit premises was in possession of the Controller of Accommodation from July 2008 till April 2010, the Rent Collector of the petitioner continued to collect the rent from the respondent no.1 and also issued rent receipts for the said period to the respondent no.1. It is not in dispute that at no point of time, the said Rent Collector of the petitioner had issued any rent receipt in favour of the respondent no.1. Since the occupants of the suit premises were dispossessed forcibly by the Controller of Accommodation on 22nd September,2008, the question of making any payment of the rent to the Rent Collector by the respondent no.1 did not arise. The respondent no.1 however continued to make the payment of the rent even during that period which indicates that the respondent no.1 was creating a record in her favour for the purpose of raising a claim of tenancy. On 9th August,2010, the Controller of Accommodation de-requisitioned the suit premises and handover possession thereof to the respondent no.1 vide an order dated 10th August,2010, the petitioner was not informed about such order and also about the factum of handing over the possession of the suit premises to the respondent no.1.

34. A perusal of the order dated 9th September, 2008 passed by the Controller of Accommodation indicates that the said authority had

categorically admitted that the competent authority had issued an order of eviction dated 15th February, 1993 thereby directing the father-in-law of the respondent no.1 to handover the possession of the premises to the Government within a period of 30 days. The eviction proceedings were initiated because of the retirement of the said allottee from the Government service. The appeal filed by the Government allottee came to be rejected on 29th June, 1993. The said order was received by Mrs.Shaila S.Gokhale on 6th July, 1993. A reference is also made to the order passed by the Supreme Court in Civil Appeal No.2026 of 2000 directing the Government allottee of the requisitioned premises who have already retired prior to 7th December,1996 i.e. the date of commencement of the Maharashtra Amendment Act No.16/1997 were not supposed to be the deemed tenant under the said amendment.

35. It was further provided in the said order that the State Government also has not considered the Government allottee of the requisition premises as a deemed tenant against whom the order of eviction was already passed by the competent authority prior to 7th December,1996. It was further mentioned in the said order that there was subletting of the suit premises on rental basis by the said Government allottee Mr.Nilkanth B.Gokhale to an unauthorized person viz.Mr.Khushalbhai Muljibhai Palampurya. The respondent no.1 therein had requested the State Government to stop the eviction proceedings on behalf of the said Government allottee. By the said order, the State Government decided to take the forcible possession of the requisition premises on 22nd September,2008 and appointed an area inspector from the Office of the Controller of Accommodation to take possession of the

suit premises. It is not in dispute that after the said order, the area inspector who had authority to take possession of the suit premises took forcible possession thereof from the occupants of the said premises. The said premises continued to be in possession of the Controller of Accommodation till 9th August,2010.

36. It is thus clear that the father-in-law of the respondent no.1 admittedly retired prior to 15th February, 1993. The suit premises were de-requisitioned by the Controller of Accommodation. The appeal filed by the father-in-law of the respondent no.1 admittedly came to be dismissed prior to 7th December,1996 i.e. on 29th June, 1993. The father-in-law of the respondent no.1 therefore was not entitled to any protection of the deemed tenancy under the provisions of Maharashtra Tenancy Act, 1997.

37. A perusal of the order dated 9th August,2010 passed by the Controller of Accommodation indicates that it was provided in the said order that the said premises had been requisitioned under the provisions of Bombay Land Requisition Act, 1948. The vacant and peaceful possession of the premises were taken on 22nd September, 2008 from the occupants. The respondent no.1 who claimed to an occupant of the suit premises, by a letter dated 30th January,2010 requested the State Government to handover the possession of the suit premises on the ground that the owner of the premises was issuing the rent receipt in the name of her father-in-law even after the possession was taken over by the Government. The respondent no.1 submitted the copies of the rent receipts in the name of her father-in-law issued prior to and after 22nd

September,2008 along with other relevant documents.

38. In the said order, it was further recorded that from the documents submitted by the respondent no.1, it was found that the petitioner had issued a rent receipt in the name of the father-in-law of the respondent no.1 on 28th January,2010 for the period July 2008 to April 2010 in the capacity as tenant. The amount of Rs.6,798/- had been paid to the petitioner by cheque dated 20th January,2010 and the same was received by the petitioner. In the said order, it was recorded that it was found that the respondent no.1 was one and the sole legal heir, declared in Will dated 23rd January,1997 and was the occupant of the requisitioned premises, when the possession was taken over. The petitioner, one of the co-owner of the premises was the person entitled to possession thereof.

39. The said order further provided that the said premises were released from the requisition and specified the name of the petitioner as the person to whom the possession of the suit premises shall be given alongwith the direct tenant/occupant subject to the provisions of sub-section 4 of section 9 of the Bombay Land Requisition Act, 1948. By the said order, the premises came to be handed over to the respondent no.1 by the Controller of Accommodation.

40. A perusal of the said order clearly indicates that the respondent no.1 had claimed rights in the requisition premises on the basis of the alleged Will alleged to have been executed by the father-in-law of the respondent no.1 and had not claimed any independent alleged rights in the suit premises. However, the respondent no.1 filed a

declaratory suit in the Small Causes Court at Mumbai *inter alia* praying for a declaration of her alleged tenancy in respect of the said requisition premises. Learned counsel for the respondent no.1 across the bar also made a statement that his client was not claiming any right in the requisition premises through her father-in-law but has been claiming right in the said premises independently.

41. Learned counsel appearing for the petitioner invited my attention to some of the relevant parts of the cross-examination of the respondent no.1 in RAD Suit No.1505 of 2011. A perusal of the said cross-examination indicates that the respondent no.1 admitted that her husband was having his ownership flat at Thane admeasuring about 600 sq. ft. which was purchased by him in the year 1994. On the death certificate of father in law of the respondent no.1, his permanent address was shown as Thane. In the Income Tax Return, passport and ration card, the address of the respondent no.1 is shown as Thane. The children of the respondent no.1 were taking education at Thane. The respondent no.1 admitted that all the rent receipts were in the name of her father in law. No rent receipts were issued in the name of the respondent no.1 in respect of the suit premises. The landlord never demanded the amount of rent of the suit premises from the respondent no.1 in writing, as a tenant. When the respondent no.1 paid the rent to the Rent Collector by cheque, she never requested for issuance of the rent receipt in her favour in writing to the landlord.

42. The respondent no.1 admitted in her cross-examination that after the death of her father in law, the landlord never demanded the rent

of the suit premises from the respondent no.1 in writing, at any time. From the date of order of eviction dated 9th September, 2008 till 26th September, 2010, the possession of the suit premises was with the Controller of Accommodation. The said order of eviction passed by the Controller of Accommodation was passed during the life time of the father in law of the respondent no.1. She admitted that no document was filed by her to show that the petitioner had accepted her as a tenant. The rent receipts filed by her were bearing the name of her father in law. She did not have any document to show that the petitioner accepted her as a tenant. She further admitted that she was claiming the tenancy rights in the suit as the legal heir / representative of the original tenant.

43. The respondent no.1 however in these proceedings has taken a stand that she is not claiming any right, title or interest in the suit premises through her father in law, but has been claiming the tenancy rights independently. This stand of the respondent no.1 is not only contrary to the stand taken before the Controller of Accommodation but also before the Small Causes Court in the said declaratory suit filed by her. In my view, the respondent no.1 cannot be allowed to take a stand in this proceeding that she is claiming any independent right in the suit premises. Be that as it may, since the respondent no.1 is at least now taking a stand that she is claiming an independent rights in the suit premises, the impugned order passed by the Controller of Accommodation on 9th August, 2010 recording that the respondent no.1 was one and the sole legal heir declared in the Will date 23rd January, 1997 and the occupant of the requisition premises, when the possession was taken over, the possession of the premises would be released in

favour of the petitioner along with direct tenant / occupant subject to the provisions of section 9(4) of the Bombay Land Requisition Act, 1948 deserves to be set aside on this ground alone.

44. Be that as it may, the suit premises having been de-requisitioned and the possession of the suit premises having been obtained by the Controller of Accommodation pursuant to an order passed by the Supreme Court, the possession of the suit premises ought to have been handed over to the owner of the suit premises i.e. the petitioner and could not have been handed over by the Controller of Accommodation to the respondent no.1 as legal heir of the said Government allottee on the basis of the alleged Will or otherwise or even as an alleged tenant. The Controller of Accommodation had no jurisdiction to decide the alleged tenancy rights of the respondent no.1 in the suit premises. In my view, the order passed by the Controller of Accommodation handing over possession of the respondent no.1 is in the teeth of the provisions of the Bombay Land Requisition Act, 1948 and the order passed by the Supreme Court.

45. Though the appeal filed by the respondent no.1 is pending against the decree passed by the Small Causes Court in the said declaratory suit filed by the respondent no.1, this Court is empowered to consider various admissions on the part of the respondent no.1 in the said suit which are contrary to the submissions made before this Court by the respondent no.1 through her counsel. This Court is also empowered to consider the stand taken by the respondent no.1 in the said proceedings which are contrary to the stand taken in these proceedings insofar as the

alleged rights claimed by the respondent no.1 are concerned. In my view, handing over possession by the Controller of Accommodation in favour of the respondent no.1 was *ex-facie* illegal and without any law.

46. Insofar as the submission of the learned counsel for the respondent no.1 that the Rent Controller of the petitioner continued to recover the rent from the respondent no.1 for the period between July, 2008 till April, 2010 is concerned, a perusal of record indicates that the respondent no.1 claims to have paid a sum of Rs.6,798/- by a single cheque dated 20th January, 2010 towards the alleged rent to the Rent Collector of the petitioner. In my view, the said payment made by the respondent no.1 by a single cheque as on 20th January, 2010 for a period July, 2008 to April, 2010 and that also for a period when the suit premises was already de-requisitioned and the original allottee was asked to hand over possession of the suit premises and his appeal having been dismissed and the occupants of the suit premises having handed over the possession of the suit premises to the Controller of Accommodation, was with an intention to create a record in favour of her so as to raise a claim of tenancy in respect of the suit premises.

47. A perusal of the cross-examination of the respondent no.1 in the said declaratory suit also clearly indicates that the husband of the respondent no.1 had already purchased a flat in his name admeasuring about 600 sq. ft. at Thane in the year 1994 and even today is standing in his name. The children of the respondent no.1 also had taken education at Thane. The name of the father in law of the respondent no.1 was also shown in the ration card having address at Thane. During the course of

submissions made by the learned counsel for the respondent no.1, learned counsel for the respondent no.1 stated that the respondent no.1 has not been staying in the suit premises permanently however, as and when her daughter is required to take a medical treatment in Mumbai, she along with her daughter stays in the suit premises during that period. This Court need not deal with the affidavit in reply filed by the respondent no.2 in this petition or the evidence led by them before the Small Causes Court in the Declaratory Suit filed by the respondent no.1.

48. For the reasons recorded aforesaid, I am of the view that the respondent no.1 along with her family members thus cannot be allowed to stay in the suit premises. The suit premises are already de-requisitioned long back and thus the petitioner is entitled to seek vacant possession thereof from the occupants of the suit premises. I am inclined to accept the submission of the learned counsel for the petitioner that though an appeal filed by the respondent no.1 against the decree passed by the Small Causes Court at Mumbai is pending, the respondent no.1 may be directed to hand over possession of the suit premises to the petitioner subject to the outcome of the said appeal.

49. I therefore, pass the following order :-

a). The orders dated 9th August, 2010 and 10th August, 2010 passed by the respondent no.2 thereby handing over possession to the respondent no.1 are set aside. The respondent no.1 along with all the occupants, if any, are directed to hand over vacant possession of the suit premises to the petitioner within four weeks from today, without fail. It is

however, made clear that handing over possession in favour of the petitioner would be subject to the outcome of the Appeal No.273 of 2016 filed by the respondent no.1 before the Appellate Bench of the Small Causes Court at Mumbai. During the pendency of the said appeal, the petitioner shall not hand over possession thereof to any third party.

b). Rule is made absolute in aforesaid terms.

c). There shall be no order as to costs.

(R.D. DHANUKA, J.)