

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.14513 OF 2018**

Govind Chandrakant Rane : **Petitioner.**
Versus
The Bharat Education Society & ors. : **Respondents.**

Mrs. Prachi Anil Tatake for the Petitioner.
Mr. G V Murti i/by MSR & Associates for Respondent No.1.
Mr. A B Kadam AGP for the Respondent Nos.2 and 4.
Mr. Govind C Rane – Petitioner present in Court.

CORAM : S. S. SHINDE, J
DATE : 14th March 2019

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 03/12/2018 passed by the Respondent No.4 herein i.e. the Appellate Authority and Principal Secretary, General Administration Department, Government of Maharashtra. By the impugned order the Appellate Authority directed the Petitioner to vacate the premises within three months from the date of the said order. The Appellate Authority by the impugned order also directed the Respondent No.2 to hand over vacant possession of the premises to the Respondent No.1 after expiry of three months.

2 The facts necessary to be cited for adjudication of the present Petition can in brief be stated thus :-

The premises in question are the two rooms in Gala No.1, House No.187/189, Khetwadi Back Road, Mumbai – 400 004. The subject premises were allotted to the father of the Petitioner vide allotment letter dated

30/11/1988 and his father was in occupation of the subject premises since 1988 as a Government Servant. The father of the Petitioner was in occupation of the subject premises till his death i.e. 26/04/1998. It is the case of the Petitioner that since his father was occupying the subject premises as on 07/12/1996, he became a deemed tenant or direct tenant of the landlord, and his tenancy was accepted and acknowledged by the Government/Controller of Accommodation. It is the case of the Petitioner that by letter dated 21/08/1999 the Respondent No.2 has informed the mother of the Petitioner that the government allottee or his heirs have become the tenant of the landlord. By communication dated 12/09/2012 the Respondent No.2 also accepted the father of the Petitioner as a direct tenant of the landlord. It is the further case of the Petitioner that by communication dated 19/09/2014 the landlord Satish Shah has been informed by the Under Secretary & Controller of Accommodation that his application seeking release from requisition cannot be entertained as Shri C G Rane i.e. the father of the Petitioner has become entitled for deemed tenancy. The Respondent No.2 also informed the Petitioner that the father of the Petitioner has become deemed tenant in respect of the subject premises.

3 Thereafter, the Respondent No.2 issued a notice dated 16/02/1995 under Section 8(C)(2) of the Land Acquisition Act for eviction. The said notice was replied to by the father of the Petitioner by a letter dated

23/02/1995. It was stated in the said reply that the said notice issued under Section 8(c)(2) of the said Act, cannot be said to be an action under the said section as the reference made in the notice is an executor's action pursuant to the letter dated 30/07/1994 and the initiation of action after a period 32 years is impermissible. The action of eviction initiated by the Respondent No.2 is thoroughly misconceived. It is stated in the said reply that the request of the landlord for eviction was rejected by the communication dated 19/09/2014. It is further stated in the said reply that under Section 15(b) of the Bombay Rents Act, 1947 the rights of the tenant and his successor has been protected.

4 The Respondent No.2 by order dated 18/12/2017, considering the factual and legal position, held that the Petitioner and his family have been in unauthorized occupation of the subject premises and by exercising powers conferred under Section 8(C)(1) of the said Act, he directed the Petitioner to vacate the said premises and hand over the peaceful possession of the subject premises within one month from receiving the said order.

5 Being aggrieved by the order passed by the Respondent No.2, the Petitioner filed Appeal No.1 of 2018 before the Respondent No.4. The said Appeal was decided on 03/12/2018 by the Appellate Authority i.e. the Respondent No.4 by which order the Respondent No.4 confirmed the order passed by the Respondent No.2. However, the Appellate Authority granted

three months time to the Petitioner to vacate the subject premises. Further liberty was also granted to the Petitioner to apply to the State Government for a suitable accommodation as per the assurance given by the Government Pleader in Appeal No.422 of 1989 which was decided by this High Court. It was further directed to the State Government to consider the application so filed by the Petitioner so as to fulfill the assurance given by the Government Pleader in the aforesaid Appeal No.422 of 1989. It was also directed to the Respondent No.2 to hand over vacant possession of the subject premises to the Respondent No.1 after expiry of three months from the date of the said order of the Appellate Authority.

6 The learned counsel appearing on behalf of the Petitioner submits that the father of the Petitioner was in possession and in occupation of the subject premises as on 07/12/1996 and his tenancy was protected as on 07/12/1996 and treated as deemed tenant of the landlord. It is further submitted that the government has accepted and acknowledged the position that the father of the Petitioner was a direct tenant. The Respondent No.2 has already informed the landlord by communication dated 19/09/2014 that his application seeking release from requisition cannot be entertained as Shri C G Rane i.e. the father of the Petitioner has become entitled for deemed tenancy, and therefore the Respondent No.2 also informed the father of the Petitioner that he has become deemed tenant. It is further submitted that once the

authority has accepted that the allottee become deemed tenant, the notice dated 25/10/2017 under Section 8(C)(2) for eviction is illegal. It is further submitted that the action of eviction initiated by the authorities is an executor action pursuant to the letter dated 30/07/1994 which is merely a information about the judgment of the Supreme Court in the case of Grahak Sanstha. He lastly contended that by virtue of the provisions made by the Amendment Act in the Bombay Land Requisition Act, the Petitioner is protected as a deemed tenant.

7 The learned AGP appearing on behalf of the Respondent/State submits that the Supreme Court in the case of Grahak Sanstha Manch v. State of Maharashtra and ors, in Writ Petition No.53 of 1993 held that requisition is of temporary in nature and it cannot be continued for an indefinite period. It is further submitted that in pursuance of the said judgment, the eviction order dated 30/07/1994 was issued to the allottee. He also submitted that as the said order was not obeyed and/or challenged by the allottee, the said letter dated 30/07/1994 attained finality and therefore the Petitioner has lost his status as government allottee. The learned AGP contended that as the said letter dated 30/07/1994 served upon the allottee, which went unchallenged, the allottee and/or his son i.e. the Petitioner cannot claim deemed tenancy as the Amendment Act is not applicable to them. It is further submitted that the order passed by the Respondent No.4 is a well reasoned order and does not

require any interference.

8 I have heard the learned counsel for the parties. I have gone through the rival pleadings, grounds and annexures to the Petition. I have perused the relevant records and the orders passed by the authorities below. By order dated 18/12/2017 the Respondent No.2 held that the Petitioner and his family members are in unauthorized occupation of the subject premises and by exercising powers conferred by Section 8(C)(1) of the Bombay Land Acquisition Act directed the Petitioner to vacate the subject premises. The Respondent No.2 observed that the allottee has never challenged the letter dated 30/07/1994 by which the government had withdrawn his right to stay in the subject premises and therefore the allottee had lost his status as government allottee. The findings recorded by the Respondent No.2 were upheld by the Appellate Authority in the impugned order. The Respondent No.4 and the Respondent No.2 have concurrently held that the letter was written to the father of the Petitioner by the Respondent No.2 on 30/07/1994. The said letter, according to the authorities, was in the nature of the directions to the Petitioner that the Government has withdrawn the right of the Petitioner to stay in the subject premises, since the allottee has lost his status as a government allottee when the said letter dated 30/07/1994 was served upon him. It is further observed by both the authorities that the Petitioner i.e. the allottee has continued to occupy and use the premises in spite of service of the

said letter dated 30/07/1994, thereby directing him to vacate the subject premises. Both the authorities have recorded concurrent findings of fact relying upon the said letter that after service of said letter, the allottee i.e. the Petitioner, has lost his status as government allottee as there was no challenge to the said letter by the Petitioner and therefore the said letter attained finality, and therefore directed the Petitioner to vacate the subject premises.

9 At this stage it is pertinent to mention that the amendments to the Bombay Land Requisition Act came into force from 07/12/1996. The letter to vacate the subject premises was issued and served upon the father of the Petitioner on 30/07/1994. Hence all the subsequent notices/letters issued to the Petitioner confirming his status as a deemed tenant of the landlord i.e. the Respondent No.1 have rightly been cancelled by the Appellate Authority.

10 Upon careful perusal of the findings recorded by both the authorities below, it is abundantly clear that the letter dated 30/07/1994 was not noticed by the authorities though the same was available on record and unaware of such a letter in the form of directions to the Petitioner to vacate the subject premises, further letters were issued to the Petitioner by the authorities confirming his status as the tenant of the original landlord i.e. Respondent No.1. It has been stated in the Affidavit filed by the trustee of Respondent No.1 Mr. Satish Shah before the authority below that while taking inspection

of the record in the office of Respondent No.2, he found the said letter dated 30/07/1994 ordering the eviction of the father of the Petitioner. He immediately brought the said letter to the notice of the authority. The very basis of the orders passed by the authorities below is the letter dated 30/07/1994. Since the said letter dated 30/07/1994 was never challenged by the Petitioner, the said letter attained finality. On the basis of the said letter, the findings recorded by the authorities below that the Petitioner has lost his status as a government allottee cannot be said to be perverse. The Appellate Authority has observed that the above mentioned letters issued to the Petitioners confirming his status as a tenant of the original landlord have been rightly cancelled in view of the letter dated 30/07/1994. Therefore there are concurrent findings of fact recorded by the Respondent No.2 as well as the Respondent No.4. In that view of matter this Court is unable to persuade itself to grant relief to the Petitioner as prayed for. In that view of the no case of interference in the writ jurisdiction of this Court is made out. The above Petition is accordingly rejected.

11 Though the Petition has been rejected, time to vacate the premises which is the subject matter of the Petition shall stand extended till 15th April 2019 upon filing an undertaking in this Court that on expiry of the aforesaid period, the Petitioner will vacate the subject premises. Such an undertaking to be filed during the course of the day.

12 During the course of hearing, the learned counsel appearing for the Petitioner informed this Court that, pursuant to the assurance given by the State Government through the Government Pleader at the time of hearing of the Appeal No.422 of 1989 before the High Court, the Petitioner has applied for government accommodation and accordingly the State Government offered the accommodation to him at Borivali. However, the Petitioner has filed another application requesting the State Government to allot the accommodation of his choice as mentioned in the said application in stead of accommodation at Borivali. Be that as it may, this Court has not expressed any opinion on the said aspect. However, in case, further application is filed by the Petitioner to the government requesting therein to offer him some other accommodation instead of accommodation at Borivali, the same shall be considered by the State Government sympathetically, keeping in view the convenience of the Petitioner and, to that effect take an appropriate decision expeditiously, however, on its own merits and in accordance with law.

[S. S. SHINDE , J]

Later on at 4.30 PM.

Date : 14th March 2019.

1 The learned counsel for the Petitioner has tendered across the bar the undertaking signed by the Petitioner, who is personally present in Court. The said undertaking is taken on record and marked as “X” for identification.

[S. S. SHINDE , J]