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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 12930 OF 2016

Deeplaxmi Gharkam Mahila Sahakari
Sanstha Ltd. ... Petitioner
Vs.
Controller of Accommodation,
General Administration Department,
State of Maharashtra & Ors. ... Respondents

Mr. Drupad S. Patil, for the Petitioner.

Mr. A. M. Kulkarni a/w Sarthak S. Diwan a/w Akanksha Helaskar,
for Respondent No. 4.

Mr. P. P. Kakade, G.P. a/w A. B. Kadam, AGP for the Respondent -
State

CORAM : C. V. BHADANG, J.

DATE : JANUARY 27, 2020

PC :

1. The challenge in this petition is to the order dated 13th May, 2016 passed by the learned Controller of Accommodation, Government of India, under sub-section (1) of Section 8 (C) of the Maharashtra Land Requisition Act, 1948 (for short the "Act"). By the impugned order, the Controller of Accommodation, has directed the Petitioner to vacate the premises i.e. Ex. Government Gramin Shop No. 245, Paranjape Bungalow, Mahatma Gandhi Road, Vile Parle (East), Mumbai within a period of 30 days. That order has

been confirmed by the appellate authority vide judgment and order dated 7th October, 2016 in Appeal No. 3 of 2016.

2. The brief facts, necessary for the disposal of the petition, may be stated thus:

. That the aforesaid premises were subject matter of requisition by the Government vide order dated 31st March, 1953 under the provisions of the said Act. It appears that the said shop premises were allotted to one Samarth Consumers Co-operative Society (for short “Samarth”) for the public purpose i.e. for running a government grain shop. In the year 1995, a notice was issued to ‘Samarth’, stating that more than 40 years had elapsed after the requisition of the premises and asking Samarth to show cause as to why, it should not be evicted from the said premises. It appears that Samarth did not send any reply to the said notice. Indisputably, the notice of the year 1995 to Samarth was not carried any further. Samarth went into liquidation in the year 1996.

3. Subsequently, the Controller of Accommodation found that the shop premises were allegedly in unauthorised occupation of the Petitioner. Hence, a show-cause notice dated 13th January, 2016 was issued to the Petitioner as to why it should not be evicted from

the said shop premises. The Petitioner filed a reply and raised various contentions. It was contended that the District Deputy Registrar of Co-operative Societies, Mumbai had granted permission to the Petitioner for repairs of the shop, and on the basis of an application dated 30th June, 2003 to the then Dy. Chief Minister of Maharashtra State, there was a direction issued by the Minister of State (Co-operation) for giving said shop premises on lease to the Petitioner. It was contended that subsequently, no steps were taken. These two circumstances were relied upon to show that the Petitioner was in authorised possession of the shop premises.

4. The Controller of Accommodation by an order dated 13th May, 2016 has directed that the Petitioner should be evicted from the said shop premises, which order is confirmed by the appellate authority. Hence, this petition.

5. Heard learned counsel for the parties. Perused record.

6. The learned counsel for the Petitioner has raised following contentions:

(i) That, under sub-section (8) of Section 9 of the Maharashtra Land Requisition Act (as amended by the Maharashtra Act No. 16 of 1997, with effect from 7th December, 1996), all premises requisitioned or continued under requisition under the said Act, and allotted to Government allottees, who on

the said date were in occupation or possession of premises shall be deemed to be released from requisition and the government allottees, referred in clause (b) of the Explanation shall become tenants by virtue of the provisions of S. 15B of the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947 (for short "Rent Act"). In short it is contended that although the Petitioner is in possession of the suit shop from the year 2000, Samarth as a government allottee was in possession of the said premises on the 7th December, 1996. As a result of this and by operation of sub-section (8) of Section 9 of the said Act, the shop premises stood released from requisition and the Petitioner would become deemed tenant by virtue of provisions of Section 15B of the Rent Act. It is thus, submitted that the Controller of Accommodation lacked jurisdiction to direct eviction under sub-section (8) of Section 9 of the said Act.

- (ii) It is submitted that the action, if any, for eviction has to be taken under the Rent Act. The summary remedy under S. 9(8) of the said Act is not available
- (iii) It is next submitted that the Petitioner has been put into possession of the said shop by the Co-operation Department, and the District Deputy Registrar of Co-operative Societies, Mumbai had granted permission for repairs of the said shop to the Petitioner and there is an order passed by the Minister of State (Co-operation) for taking action for grant of lease of said shop to the Petitioner. It is submitted that this would

indicate that possession of the Petitioner was legal and not unauthorised. It is submitted that the appellate authority has not considered these circumstances properly.

7. Learned counsel for the Respondents has supported the impugned order. It is submitted that the requisition as per the amended provisions cannot continue for a period beyond 24 years, as per sub-section (1) of Section 9 of the said Act. It is submitted that the requisition having been made in the year 1953 would continue only upto the year 1977, and not thereafter. It is submitted that after 1977 even 'Samarth' had no authority to continue in occupation of the said shop. It is submitted that the Petitioner claims to have been put into possession by the Co-operative department in the year 2000. It is pointed out that the Co-operative department had no authority to deal with the said shop, which was requisitioned way back in the year 1953 and which requisition had out lived in the year 1977. It is submitted that the Petitioner has not produced any document to show that it is a government allottee, so as to take the benefit of sub-section (8) of Section 9 of the said Act.

8. The learned counsel for the Respondents has taken me through the order passed by the Appellate Authority, in order to submit that all the relevant circumstances, have been considered by

the appellate authority. A reference is also made to the report dated 21st December, 2015 made by the District Deputy Registrar, Co-operative Societies, Mumbai to the Controller of Accommodation in order to submit that possession of the said shop by the Petitioner is totally unauthorised.

9. I have considered the rival circumstances and the submissions made. Admittedly, the suit shop was requisitioned in the year 1953 and Samarth was a government allottee in respect of the said shop. It is also not in dispute that 'Samarth' went into liquidation in the year 1996. A perusal of the report dated 24th December, 2015 given by the District Deputy Registrar of Co-operative Societies, Mumbai would show that, according to the Petitioner, suit shop was granted to it by the co-operative department in the year 2000. However, the Petitioner has not produced any document of such allotment. That apart, it is also not possible to accept as to how the co-operative department was concerned with the said shop and / or authorised to give it to the Petitioner. Reliance placed on the permission for repairs by the District Deputy Registrar, and file noting by the Minister of State (Co-operation) are insufficient to accept that there was any valid allotment of the said shop in favour of the Petitioner. At the highest,

these documents can only indicate that the Petitioner was in possession of the said shop.

10. Now, coming to the contention based on sub-section (8) of Section 9. In order to appreciate the said contention, it is necessary to reproduce Section 9, to the extent relevant, which reads as under :

“9(1). The State Government may, at any time, release from requisition any land requisitioned or continue to be subject to requisition under this Act.

(1A). Notwithstanding anything contained in sub-section (1), the State Government shall release from requisition,-

(a) any land requisitioned or continued to be subject to requisition under this Act before commencement of the Bombay Land Acquisition (Amendment) Act, 1973, on or before the expiry of a period of twenty-four years from such commencement;

(b) any land requisitioned under this Act after such commencement, on or before the expiry of a period of twenty-four years from the date on which possession of such land was surrendered or delivered to, or taken by, the State Government or any officer authorised or empowered by the State Government.

..

9(8) On the date of coming into force of the Bombay, Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction)(Amendment) Act, 1996, all the premises requisitioned or continued under requisition under this Act and allotted to Government allottees who, on the said date were in occupation or possession of such premises shall be deemed to have been released from requisition, and in respect of such premises the State Government or, as the

case may be, the Government allottees referred to in clause (b) of the Explanation, shall become the tenants by virtue of the provisions of section 15B of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and the compensation, if any, due in respect of such premises shall be determined and paid to the persons entitled thereto as if such premises were actually released under this section.

Explanation – For the purpose of this sub-section, the expression “Government allottee” -

(a) in relation to any premises requisitioned or continued under requisition which are allotted by the State Government for any non-residential purpose to any department or office of the State Government or Central Government or any public sector undertaking or corporation owned or controlled fully or partly by the State Government or any co-operative society registered under the Maharashtra Co-operative Societies Act, 1960 or any foreign consulate, by whatever name called, and on the date of coming into force of the Bombay, Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction)(Amendment) Act, 1996, [are in their occupation or possession], means the principal officer-in-charge of such office or department or public sector undertaking or corporation or society or consulate; and

(b) in relation to any premises requisitioned or continued under requisition which are allotted by the State Government for residential purpose to any person and, on the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996, [such person or his legal heir is in occupation or possession of such premises for his or such legal heir’s own residence, means such person or legal heir].”

11. It can thus, clearly be seen that after 1996 amendment, which came into force on 7th December, 1996, maximum period for

which a requisition can continue is 24 years. Apparently, there are no orders passed by the Government for continuation of requisition after completion of 24 years i.e. 1977. A bare perusal of sub-section (8) of Section 9 of the Act would show that it would apply only where the party is shown to be a government allottee, who on the said date i.e. 7th December, 1996 was in occupation or possession of such premises. Admittedly, the Petitioner is neither a government allottee nor claims to be in possession of the said shop in the year 1996, inasmuch as, according to the Petitioner, it was put in possession of the said shop by the co-operative department in the year 2000. Thus, contention based on sub-section (8) of Section 9 of the Act, to my mind, cannot be accepted.

12. It was contended by the learned counsel for the Petitioner that Samarth was in possession of the said shop on 7th December, 1996, and therefore, by virtue of operation of sub-section (8) of Section 9 of the said Act, the shop premises stood released from requisition. I am afraid this contention cannot be accepted for more reasons than one. Firstly, this is not a petition filed by 'Samarth'. Ideally, it is only Samarth, which could have raised such contention. Secondly, there is nothing on record to demonstrate upto what point of time, either prior or subsequent to its liquidation,

‘Samarth’ was in possession and occupation of the said shop. Looked from any angle, the reliance placed on sub-section (8) of Section 9, to my mind is misplaced.

13. I have carefully gone through the impugned order passed by the Controller of Accommodation as well as order passed by the appellate authority. I do not find that it suffers from any infirmity, so as to require interference in the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The petition is devoid of any merits and is accordingly dismissed, with no order as to costs.

14. At this stage, the learned counsel for the Petitioner seeks extension of the ad-interim relief for a limited period. Learned counsel for the Petitioner, on instructions, states that Petitioner shall not create any third party rights and shall not induct any third party in the shop premises, nor alter nature of the subject structure. The statement so made is accepted. Subject to this statement, ad-interim relief already operating shall continue for a period of eight weeks from today.

Sd/-
C. V. BHADANG, J.

Vinayak Halemath

Vinayak P.
Halemath

Digitally signed by
Vinayak P. Halemath
Date: 2020.01.29
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