

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

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WRIT PETITION NO.2135 OF 2009

- | | |
|---------------------------------|------------------|
| 1. Snehakant Chandrakant Shroff |] .. Deleted |
| 1A. Indira Snehakant Shroff |] .. Deleted |
| 1B. Neha Snehakant Shroff |] |
| 1C. Dev Jayvaden Ghia |] .. Petitioners |

Versus.

- | | |
|-------------------------------------|------------------|
| 1. The State of Maharashtra |] |
| 2. The Chief Secretary, |] |
| Ministry of Home Affairs, |] |
| Government of Maharashtra. |] |
| 3. The Police Commissioner / |] |
| Joint Police Commissioner, |] |
| Office of the Commissioner, Mumbai. |] .. Respondents |

Dr. Sujay Kantawala with Ms. Aishwarya Kantawala, Mr. Shrikant Shroff and Ms. Hamza Lakhani, Advocates, i/by India Law Alliance, for the Petitioners.

Mr. Mohit Jadhav, Additional Government Pleader for Respondent Nos.1 to 3.

Mr. Deepak Shinde, ACP, CP Office, Mumbai is present.

Mr. Vaibhav Pethkar, API, CP Office, Mumbai is present.

CORAM : A.S. CHANDURKAR &
JITENDRA JAIN, JJ

DATE : 30TH APRIL, 2024.

JUDGMENT : { Per A.S. Chandurkar, J. }

1. In this writ petition, filed under Article 226 of the Constitution of India, the petitioners seek a declaration that the action on the part of the

respondents in not releasing and thereafter restoring the possession of Flat Nos.11 and 12 on the 3rd floor of the building named 'Amar Bhavan', A.R. Rangekar Marg, Opera House, Mumbai 400 007 that belong to the petitioners is unlawful, illegal and in violation of the petitioners' fundamental rights. The petitioners accordingly pray that the respondents be directed to forthwith vacate and handover peaceful possession of the aforesaid premises to them.

2. It is the case of the petitioners, as pleaded in the writ petition, that in or about the year 1940, the aforesaid two flats were permitted to be temporarily occupied by the Police Department at their request so as to meet the requirement of housing police officers to enable maintenance of the law and order situation. The petitioners have pleaded that there was no written contract executed between their predecessor and the Police Department. Certain amounts were paid by the Police Department to the predecessor on monthly basis and till about 31st December 2007, Rs.611/- per month was being paid. On 10th September 1997, the predecessor of the petitioners, through his Advocate had issued a communication to the respondents raising a grievance with regard to non-payment of the monthly amount. According to the petitioners, since they were in need of the aforesaid premises, a request was made to the respondents to return possession of the same. Since the same was not done, this writ petition came to be filed.

3. Dr. Sujay Kantawala, learned counsel for the petitioners in support of the prayers made in the writ petition referred to the orders passed in Writ Petition Nos.1108 of 2005, 343 of 2005 and 344 of 2005 to contend that in the aforesaid writ petitions, the possession of the respective premises were handed over by the respondents to the concerned petitioners. Though this writ petition was to be heard along with the aforesaid writ petitions, it could not be heard when the said writ petitions were decided. He submits that on similar terms, a direction be issued to the respondents to handover possession of the aforesaid two flats. Without prejudice to the aforesaid, it was contended that the occupation of the respondents since the year 1940 was on the backdrop that the two flats had been requisitioned by the respondents for temporary use of the Police Department. Though there was no written order requisitioning these two flats, it was undisputed that possession of the same was handed over to facilitate convenience of the Police Department since it intended to house its police officers. Inviting attention to the information supplied to the petitioners under the provisions of Right to Information Act, 2005 (*for short, "the Act of 2005"*) pursuant to the application dated 25th June 2007, it was pointed out that copy of written Lease Deed was not available even with the respondents. Further information supplied in October, 2020 indicated that the respondents had no record to indicate the period when the monthly payment towards occupying these flats was paid. Since the

petitioners were now in need of the said two flats, it was obligatory on the part of the respondents to handover possession of the same. As regards applicability of the provisions of the Maharashtra Land Requisition Act, 1948 (*for short, "Act of 1948"*), as urged by the respondents is concerned, it was submitted that since the two flats were orally requisitioned in the year 1940, the provisions of the said Act would not apply retrospectively. To substantiate this contention as regards the entitlement to receive back possession, the learned counsel for the petitioners placed reliance on the decisions of the Supreme Court in *H.D. Vora Vs. State of Maharashtra and Ors.*, (1984) 2 SCC 337; *Grahak Sanstha Manch and Ors. Vs. State of Maharashtra*, (1994) 4 SCC 192; *Roy Estate Vs. State of Jharkhand and Ors.*, (2009) 12 SCC 194, as well as the judgment of this Court in *Geeta Mangesh Laud and Ors. Vs. Appellate Authority and the Principal Secretary, General Administration Department and Ors.*, with connected writ petitions, 2023 SCC OnLine Bom 1004. This decision was challenged before the Supreme Court unsuccessfully. It was thus urged that since possession of the said flats had been handed over in the year 1940 on account of the need of the Police Department then and about 84 years had elapsed since handing over of such possession, the petitioners were entitled to receive back possession of the same.

4. Mr. Mohit Jadhav, learned Additional Government Pleader opposed aforesaid submissions. Inviting attention to the pleadings in the writ

petition, it was submitted that in absence of any written order of requisition, it was not open for the petitioners to contend that the respondents had requisitioned the two flats in the year 1940. On the contrary, it was submitted that possession of the same was handed over voluntarily and monthly amounts were being paid to the predecessor of the petitioners, which was evident from the record. According to him, the grievance made in the writ petition was also with regard to non-payment of the monthly amounts, which would thus indicate that the petitioners were seeking eviction of the respondents without terminating their license / tenancy. Attention was invited to the communication dated 30th July 2012 issued on behalf of the petitioners raising a grievance that since January 2008, the monthly amounts towards occupation of the two flats were not being paid. The aforesaid would therefore indicate that there was no requisition of the said premises and in fact, on the basis of an oral agreement, the respondents were put in possession. It was further submitted that this Court had entertained a somewhat similar grievance in Writ Petition Nos.1429 of 1990 and 1430 of 1990 (*Anil Harish and Ors. Vs. Chief Secretary, Government of Maharashtra and Anr.*). The said writ petitions had been allowed by the judgment dated 23rd April 2004 and an order of eviction along with award of damages came to be passed. The said judgment was challenged before the Supreme Court and by it's judgment dated 15th November 2007 (*Chief Secretary, Government of*

Maharashtra and Anr. Vs. Anil Harish and Ors.) the appeal was allowed and the judgment of this Court was set aside on the ground that the remedy available to the petitioners therein under the Maharashtra Rent Control Act, 1999 ought to have been invoked especially since that was the statutory remedy available. The High Court in exercise of jurisdiction under Article 226 of the Constitution of India ought not to have entertained the writ petition. On this basis, it was urged that in the absence of any written order of requisition, the prayers made by the petitioners may not be granted and the petitioners be directed to avail the statutory remedy.

5. We have heard the learned counsel for the parties at length and with their assistance, we have perused the documentary material on record. It is an admitted position that sometime in the year 1940, possession of Flat Nos.11 and 12 was voluntarily handed over by the predecessor of the petitioners to the Police Authorities. It is further admitted that there is no written order requisitioning the aforesaid two flats for temporary use by the Police Authorities. The dispute however is with regard to nature of occupation of the Police Authorities. While the petitioners seek to contend that such occupation is pursuant to the two flats being requisitioned for use of the Police Authorities, the respondents contend that having paid monthly amounts to the predecessor of the petitioners and thereafter to

the petitioners, the occupation of the Police Department is not pursuant to any requisition of the premises and that its possession is permissive in nature. The documentary material on record in the form of information supplied under the provisions of the Act of 2005 indicates that there is no written Lease Deed on the basis of which the Police Authorities have entered into possession. The documents also show that monthly amounts were paid regularly till December, 2007 and the petitioners had made a grievance that since January, 2008, such payments were not being made. On the basis of the material on record, it cannot be concluded that the occupation of the Police Authorities is pursuant to any order of requisition. There being a dispute with regard to the nature of their occupation, it would not be expedient for this Court to factually adjudicate this aspect and record a finding as regards the nature of occupation of the respondents. We thus find that there is no material on record to substantiate the petitioners' claim that the said two flats were requisitioned on the basis of which the Police Authorities entered into possession.

6. It is true that the Act of 1948 came into force after possession of the two flats was taken over in the year 1940. The same however would not have material bearing on this issue in the light of the fact that the nature of possession of the respondents cannot be stated to be pursuant to any order of requisition. The ratio of the decisions relied upon by the learned

counsel for the petitioners cannot be applied to the facts of the present case.

. Heavy reliance was placed by the learned counsel for the petitioners on the orders passed in various writ petitions, as referred above, along with which this writ petition was to be heard. However, perusal of all the orders indicates that the parties therein had arrived at a settlement and had filed Consent Minutes of Order. The writ petitions were not adjudicated on merits but the respondents therein agreed to handover possession of the premises in question therein. Hence, on facts, the aforesaid adjudication cannot be taken into consideration. On the contrary, the learned Additional Government Pleader is justified in relying upon the decision of the Supreme Court in *Chief Secretary, Government of Maharashtra Vs. Anil Harish and others (supra)*.

7. We are not inclined to exercise jurisdiction under Article 226 of the Constitution of India in view of the fact that there is no written order of requisition. Since the manner in which the respondents entered into possession of the premises is disputed, liberty is granted to the petitioners to avail appropriate remedy as available in law to seek appropriate reliefs. Keeping all points raised in the writ petition on merits open, the same is dismissed with no order as to costs. Rule stands discharged.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]