

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

WRIT PETITION NO. 340 OF 2024

Parvatibai Shankar Kamble Petitioner

V/s.

The Controller of Accommodations & Ors. Respondents

NILAM
SANTOSH
KAMBLE

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NILAM SANTOSH
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Date: 2024.06.21
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Mr. Amogh Singh a/w Mr. Santosh Pathak, Mr. Chirag Thakkar i/b
Law Origin, for the Petitioner.

Mr. Himanshu Takke, AGP, for the Respondent-State.

CORAM : G.S. KULKARNI &
ARUN R. PEDNEKER, JJ.

DATE : 11th JUNE 2024

P.C:-

1. We have heard Mr. Amogh Singh, the learned counsel for the petitioner. We have also noted the order dated 10 October 2023 passed by a co-ordinate Bench of this Court, by which the petitioner was permitted to amend the petition and implead respondent nos. 3 to 8, who were stated to be in occupation of the residential premises. The Court also issued Court notice to the added respondents. There is a service report of the Section Officer (Writ Department) referring to the Bailiff's report dated 2 November 2023. Such report in respect of respondent no. 4 indicates that respondent no. 4 is not served,

respondent nos. 3 and 5 to 8 have been served. It appears that all these respondents are residents of the writ tenement. In our opinion, the service of petition on respondent nos. 3, 5 to 8 would be sufficient for the Court to proceed with the matter. Thus, respondent nos. 3, 5 to 8 although served, they are not represented. It appears that they are not interested to prosecute the proceedings.

2. On the backdrop, we have heard learned counsel for the appearing parties.

3. The case of the petitioner is to the effect that her husband, being in government service, was in occupation of the tenement in question provided for his residence. The description of the tenement is found in paragraph no. 1 of the memo of the petition. It is the petitioner's case that the petitioner's husband went missing sometime in the year 1986. It is contended that the building in which the said tenement was allotted to the petitioner, was also demolished sometime after 1986 and a new building has been constructed.

4. The contention of the petitioner is that almost 20 years thereafter, that is, in the year 2005, the petitioner came to know that the name of the petitioner's husband, who was the government

allottee for the residential tenement in question, has been misused by respondent nos. 3 to 8 who have come into the occupation of an alternate tenement allotted to them in lieu of the tenement allotted to petitioner's late husband. It appears that an action to evict respondent nos. 3 to 8 was initiated by the Controller of Accommodation, as these respondents were in no manner connected with the original allottee i.e. the husband of the petitioner. In this regard, our attention is drawn to the eviction orders dated 9 January 2008, 6 February 2008 and the order dated 21 April 2008 passed by respondent no. 1- Controller of Accommodation.

5. It is Mr. Singh's contention that although respondent nos. 3 to 8 in no manner were connected and/or related to either the petitioner or the husband of petitioner Mr. Shankar Sayaji Kamble, however they described themselves to be legal heirs of husband of petitioner for coming into possession of the tenement in question.

6. Be that as it may, it clearly appears that an eviction order was passed against respondent nos. 3 to 8 on 9 January - 6 February 2008 as noted by us hereinabove. It appears that the eviction orders came to be challenged by respondent no. 3 by approaching this Court in Writ Petition No. 1729 of 2008. This Court dismissing the said Writ

Petition by an order dated 9 February 2008, passed the following order.

*“None for the petitioners. The facts stated in the impugned order that the petitioner was inducted in the premises by a allottee of the State Government has already retired. If that is so, the petitioner or any member of his family are not entitled for any protection and is bound to vacate the premises. **Having gone through the earlier orders passed in this Petition, the petitioners are merely delaying the matter to continue with their unauthorized occupation. We do not find any merit in the Petition. Petition is dismissed.***

(emphasis supplied)

7. Subsequent to such order, again an eviction notice dated 5 March, 2009 was issued by the Controller of Accommodation to respondent nos. 3 to 8. On such backdrop, a review petition was filed by respondent nos. 3 to 8, being Review Petition (Lodging) No. 12 of 2009, which came to be rejected by the Division Bench of this Court by an order dated 6 March 2009, which reads thus :

“1. Not on board.

2. Heard.

3. This is a petition for review, made by the Petitioners. Petition came to be disposed of by order dated 9.2.2009.

4. There are two major contentions on which review of the order is sought, firstly; that respondent-authority has failed to comply with the provisions of clause 8C (1)(c) of the Bombay Land Requisition Act, 1948 as no notice was served on the occupants, secondly; if the premises have been taken over by MHADA or corollary, MHADA has accepted the Petitioners as their tenants.

5. We do not find any substance in the submission made by the learned counsel for the Petitioners as the competent

authority has complied with the requirements before passing the order of eviction.

6. In so far as next contention is concerned, admittedly, MHADA is not landlord of the accommodation. On the other hand, the accommodation is under requisition and the Petitioners are claiming through the original allottee who was allotted the accommodation by the Respondents. Therefore, now the Petitioners cannot take a plea that as the premises have been taken over by MHADA and he is paying rent to MHADA, there is severance of relationship between the Petitioners and Respondents and the Respondents have no control over the premises.

7. Further, we do not find any error apparent on the face of record so as to review our order dated 9.2.2009.

8. Review Petition is dismissed with costs which is quantified at Rs.5000/-."

8. The petitioner has contended that despite eviction orders passed against respondent nos. 3 to 8, since 2008 misusing the name of the petitioner's husband, respondent nos. 3 to 8 have continued to remain in possession. It is submitted that admittedly eviction orders are passed by the Controller of Accommodation against them, no concrete actions were taken for the implementation of the eviction orders. In this context, our attention is also drawn to an order dated 29 January 2020 by which the Controller of Accommodation called upon respondent nos. 3 to 8 to vacate the premise within a period of 30 days.

9. Mr. Takke, learned AGP has informed us that as this period was followed by the pandemic period, no action has been taken.

10. Having heard learned counsel for the parties, we find that considering the settled principle of law, the petitioner *per se* may not be benefited by the eviction of respondent nos. 3 to 8. The petitioner has already lost her rights in respect of the alternate premises and more particularly, considering the fact that the petitioner's husband did not continue in the Government service after 1986 and more particularly prior to the year 1996. The Supreme Court in *M.T. Gajjar V/s. State of Maharashtra*¹ has held that if a government servant who has retired and died prior to 7 December 1996 would not be granted benefit of any tenement as a deemed tenant. Thus, once such rights are lost, the petitioner cannot make any claim as a tenant of the alternate tenement.

11. Be that as it may, what has been brought to the notice of the Court by the petitioner is an illegality, which cannot be overlooked by the Court. It cannot be countenanced that the Controller of Accommodation would permit respondent nos. 3 to 8 to illegally

¹ (2000)3 SCC 295

occupy the tenement in question despite several orders being passed against them to vacate the tenement. It also appears that this is a case where the respondent nos. 3 to 8 have misused identity of the husband of the petitioner to get into the tenement in question. This cannot happen unless at the relevant time these respondents had an illegal protection of the officers from the department of Controller of Accommodation. It is also clear from the eviction order that respondent nos. 3 to 8 are not asserting possession of the tenement in their own legal capacity as legal and *bona fide* allottee of the State Government. In fact, it appears that they have put up a fraudulent claim of being legal heirs of Mr. Shankar Sayaji Kamble, husband of the petitioner. In these circumstances, respondent nos. 1 and 2 ought to have taken the eviction proceeding to its logical conclusion and more particularly, the notice which was issued on respondent nos. 3 to 8 on 29 January 2020. In the facts of the case, it needs to be presumed that there is gross illegality on the part of respondent nos. 3 to 8 to remain in occupation of a tenement in a prime locality in the city where the rent is very high, however, at the cost of public exchequer, respondent nos. 3 to 8 under an implicit protection from the Controller of Accommodation appears to be enjoying the

premises, as the notices issued to them have remained only paper notices.

12. Respondent nos. 3 to 8, have failed to appear before this Court as they are not interested. In any event, it *prima facie* appears that they have no legal right in respect of the tenement.

13. We accordingly, adjourn the proceedings to be listed '**First on Board**' on 27th June 2024, to enable respondent nos. 1 and 2 to place on record the eviction report.

14. We, accordingly, pass the following directions.

ORDER

(i) Respondent Nos. 3 to 8 are directed to vacate the premises on or before 24 June 2024.

(ii) In the event, possession of the tenement in question is not handed over by respondent nos. 3 to 8 to respondent no.1, respondent no. 1 is permitted to forcibly evict respondent nos. 3 to 8 and for which respondent no.1 is permitted to take the aid of Officer-in-charge of the local Police Station.

(iii) Let an eviction report in this regard be placed on record.

(iv) We also direct the Controller of Accommodation to place on record an affidavit as to how much rent is collected from respondent Nos. 3 to 8 from the period of eviction notice dated 9 January 2008 till date. A monthly statement of which be annexed to the affidavit, which be placed on record two days prior to the adjourned date of hearing. A copy of the same be also served on all the parties.

(v) Parties to act on authenticated copy of this order.

(ARUN R. PEDNEKER, J.)

(G.S. KULKARNI, J.)