



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

WRIT PETITION NO. 340 OF 2024

Parvatibai Shankar Kamble

... Petitioner

vs.

The Controller of Accommodations & Ors.

... Respondents

Mr. Amogh Singh a/w. Mr. Santosh Pathak, Chirag Thakkar, Porva Naik,
Kailash Pathak i/b. Law Origin for the petitioner.
Mr. Himanshu Takke, AGP for the State.

CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.
DATED: 10 July, 2024

P.C.

1. As can be clearly seen from the previous orders passed by this Court, this is a gross case of illegal usurpation of requisitioned premises, which were under the control of respondent no. 1.
2. Today, Mr. Takke, learned AGP has tendered an affidavit of Mr. Devidas Sanduji Bhagure, Under Secretary and Controller of Accommodation, wherein in paragraph 4, the said officer has stated that the possession of the premises in question was taken by respondent no. 3 and his family members, by taking undue advantage of similar initials and the name of the original allottee and pursuant thereto respondent No.3 and his family members continued to remain in illegal possession of the tenement.

3. It is not in dispute that an eviction order against respondent no. 3 was passed on 9 January, 2008 as also on 6 February, 2008 and the final order dated 21 April, 2008, which were all subject matter of challenge before this Court in Writ Petition No. 1729 of 2008, which came to be dismissed. The Review Petition against the said order was also dismissed. The obvious consequence was that respondent no. 3 ought to have been immediately evicted at such time. However, respondent no. 1 as also the MHADA, remained mute spectators. We have no manner of doubt considering the facts of the present case that respondent no. 3 was occupying the premises, which was under the control of respondent no. 1, in collusion with the concerned officers from the department of Controller of Accommodation, for the reason that the eviction orders had remained only paper orders. This apart, the orders passed by the Court confirming the eviction order had also remained paper orders which were never implemented. Further, what is more disturbing is that as admitted by respondent no. 3, he continued to illegally occupy the premises without paying any rent whatsoever and that too in a prime locality. This cannot happen unless Respondent No.3 was supported by the concerned officers of the department.

4. In the above circumstances, earlier we had passed an order dated 11 June 2024 issuing specific directions not only in regard to eviction of respondent no. 3 but also directing the Controller of Accommodation to place

on record an affidavit as to how much rent was collected from respondents nos. 3 to 8 from the date of eviction notice (9 January, 2008) till the date of the said order. It was directed that a monthly statement of rent paid by respondent No.3 be prepared and placed on record. However, nothing of what we had ordered stands complied with. In the affidavit of Mr. Devidas Sanduji Bhagure, it is stated that information was received by him from MHADA about the rent being calculated. It is stated that from the period 2008, i.e., from the eviction of respondent no. 3 till 2011, only an amount of about Rs. 10,000/- was paid by respondent no. 3, however, no rent was paid by respondent no. 3 from April 2011 till his eviction on 5 July, 2024, i.e., for a period of almost 13 years respondent no. 3 was occupying the premises free of cost / at the cost of public exchequer and no steps were taken for recovery of the rent.

5. In our opinion, certainly this may not be an isolated case, it is likely that there may be several such cases, as only the petitioner (widow of the deceased original allottee) approached this Court in the present proceedings to seek eviction of respondent No.3 who was illegally occupying the tenement in question, we could pass orders to stop further usurpation of Government property by respondent No.3.

6. In such circumstances, we direct the Principal Secretary, General Administrative Department to inquire into the facts of the present case as to

who were the concerned officers involved and at whose instance / support / connivance respondent no. 3 continued to occupy the premises and as to why such action was not taken against such officers who not only permitted respondent No.3 to illegally occupy the premises despite an eviction order passed in January 2008 but failed to recover any rent. Let such issue be examined and affidavit in that regard be placed on record along with the names of persons and the actions which are required to be taken.

7. We, accordingly, adjourn the proceedings for a period of three weeks awaiting the affidavit to be filed by the Principal Secretary, General Administrative Department.

8. We may also observe that the Principal Secretary may also call for cases of similar allottees of government premises and what is the status of such occupation and whether only occupants who are authorized by respondent and lawfully, are occupying such premises, which are under the control of respondent no. 1. The relevant information in that regard be also included in the affidavit to be filed by the Principal Secretary.

9. Insofar as respondent no. 3 is concerned, we are informed that he has vacated the premises as per the undertaking furnished by him in the Court, however, we are informed that there are substantial arrears of rent. We are of the opinion that the arrears shown to us is not the correct figure, in view of the

fact that after 9 January, 2008 respondent no. 3 was an illegal occupant and an illegal occupant would not be permitted to enjoy the premises as per the normal / regular rent which is paid by the government employee. The rent is to be calculated as per the policy of the government and at specified rates or at rates commensurate with the prevailing market rate at the relevant time. Such amount is also required to be calculated by the concerned officers of the MHADA and would be now required to be recovered from respondent no. 3. Failing this it would amount to a premium on illegality, as respondent No.3 cannot smoothly get away after illegally occupying the government tenement for such a long period. This would be a situation of total lawlessness. The Court be informed about such rent which would be required to be paid by respondent No.3 on account of his free/ illegal occupation of the tenement from 9 January, 2008. More so, when respondent no. 3 did not pay a single farthing from April, 2011. Such amounts would be required to be recovered from respondent No.3 as arrears of land revenue.

10. We also wonder as to why a person who has forged the signature of original allottee, no criminal proceedings were initiated against him. In fact this is something which would shock the conscience of the Court. The Principal Secretary shall also apply his mind in this regard as in this case (we don't know in how many other cases) Officers subordinate to him in the department of respondent No.1 have clearly failed to discharge their public

duties as the law would require. No person who is alleged to have forged the documents by taking undue advantage of similar initials and the name of the original occupant of the premises can be let off, merely for the reason that respondent No.3 had the blessings of the officers of respondent No.1, accountability of all such officers and employees from the department of respondent No.1 needs to be examined and appropriate action be taken. The State is required to take appropriate action in this view of the matter and initiate criminal action in regard to any forgery by respondent no. 3, when on behalf of respondent No.1, it has been fairly stated in today's affidavit that respondent no. 3 has in fact forged the initials of the original allottee, namely, the petitioner's deceased husband. Let all these aspects be dealt by the Principal Secretary in the affidavit which would be filed by him.

11. Stand over to **25 July, 2024 (H.O.B.)** for compliance.

(SOMASEKHAR SUNDARESAN, J.)

(G. S. KULKARNI, J.)