

(1997) 07 BOM CK 0040
In the Bombay High Court
Case No : Writ Petition No. 2268 of 1990

Abdul Haque Umar Khan

APPELLANT

Vs

The Estate Manager-II, Bombay Housing and Area
Development Board and another

RESPONDENT

Date of Decision : 23-07-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Maharashtra Housing and Area Development Act, 1976 — Section 2(4), 66

Citation : (1998) 2 ALLMR 750 : (1998) 1 BomCR 246

Hon'ble Judges : F.I. Rebello, J

Bench : Single Bench

Advocate : V.A. Thorat and C.S. Shidhore, for A.S. Karwande, for the Appellant; S.D. Rane, A.G.P., A.K. Abhyankar, P.S Dani and H.N. Vakil, instructed by y M/s Mulla and Mulla and C.B. and Caroe., for the Respondent

Judgement

F.I. Rebello, J.—The petitioner in this petition impugns the order dated 26th March, 1990 passed by the Appellate Officer under the Maharashtra Housing and Area Development Act, Bombay, in Appeal No. 40 of 1989. By the said order, the appeal, preferred by the petitioner was dismissed. The said appeal was against the order dated 31st January 1989 passed by the Competent Authority directing eviction of the petitioner as unauthorised occupant of Block No. C-31/269. M.I.G. Gandhi Nagar, Bandra (East).

2. The respondent No. 2 was allotted a tenement by the Maharashtra Housing and Area Development Authority (in short MHADA) on 9th July 1982 on a monthly rent of Rs. 123.75 Ps. Sometime in May 1967 the Tenancy Arrangement was converted into a Hire Purchase Scheme whereby the allottee was required to make monthly payment towards the purchase of the tenement. Sometime in September 1974 respondent No. 2 vacated the premises and started occupying Flat No. 7, Garden King", Santacruz, Bombay. In October 1972 the petitioner came to occupy the said tenement under" a financial arrangement with the respondent No. 2. The initial induction of the petitioner was without the

permission of the Competent Authority under the provisions of the Maharashtra Housing and Area Development Act. 1976. A show cause notice was issued to the petitioner after which a Care Taker Arrangement was executed in January 1974 for the period January 1974 to December 1974 between the petitioner and respondent No. 2. A second Care Taker Agreement was entered into for the period from 1st January 1975 to 30th June, 1975. After this the show cause notice which was initially addressed to the petitioner was withdrawn on 23rd May 1974. A third Care Taker Agreement was entered into for the period from 1st July 1975 to 30th June, 1976. The petitioner gave an undertaking that in the event respondent No. 2 did not occupy the premises after the expiry of the agreement he would handover the premises to respondent No. 1. On the expiry of the said period of Care Taker Agreement fresh application was moved for extension, however, no action was taken on the same by the Authorities under MHADA. The record shows that by letter dated 15th July 1976 the respondent No. 2 was informed that grant of permission for extension of Care Taker Arrangement was under consideration of the Authority and that the respondent would be informed if the decision is taken.

3. On 8th November 1977 the respondent No. 2 made an application to the Board for the transfer of the tenement in the name of his brother S.K. Bose. The permission for the same was not granted by the Authorities under MHADA. A Co-operative Society of allottees residing in the building came to be registered on 25th November 1979. On 21st June, 1982 the shares in respect of the said tenement were transferred in the name of the wife of respondent No. 2. On the 11th July, 1987 the petitioner applied to the Board for transfer of premises in his name after regularising his occupation under the policy of the Board. On 19th February, 1988 the respondent No. 2 made an application to the Secretary Housing Ministry for the eviction of the petitioner. A show cause notice dated 17th May 1988 was issued to Shri B.K. Bose (respondent No. 2), Abdul Haque Umar Khan (petitioner) and Smt. Ajij Janha Umar Khan. In the said notice it was mentioned that action u/s 66 of the Maharashtra Housing and Area Development Act was proposed to be taken and by the said notice the notices were called upon to give explanation and produce evidence as to why orders for their eviction should not be passed. On a consideration of the material before it, the Authority in Case No. 178 of 1988 was pleased to hold that the charges against the respondent No. 2 could not be proved but that the charge against the petitioner was correct and consequently directed eviction of the petitioner.

4. Aggrieved by the said order the petitioner preferred an appeal u/s 70(1) of the Maharashtra Housing and Area Development Act. The Appellate Authority held that the order of the Competent Authority was not vitiated as the petitioner was residing in the premises belonging to respondent No. 2. The Appellate Authority further held that the petitioner had given an undertaking to the Board that he would vacate the premises after the expiry of the Care Taker period and that in spite of the undertaking the petitioner had not surrendered the premises. The contention raised on behalf of the petitioner that all the payments had been

made and as such the suit premises ceased to be the Board's premises was rejected. The contention on behalf of the petitioner relying on the judgment of this Court in the case of *Nirmala Dhondiram Kadam (Smt.) Vs. Shatrughana K. Padava and Others*, was distinguished as being not applicable to the facts of the case. The other contention of the petitioner that his occupation of the flat should be regularised in his name was also rejected on the ground that without the consent of respondent No. 2 the Board could not transfer the suit premises in the name of the petitioner. The argument that as proceedings against respondent No. 2 had been dropped and as such proceedings against petitioner should be held to be vitiated was also rejected. Reliance placed on the submissions filed by the Law Officer of respondent No. 1 was also rejected. The last contention which was raised before the Appellate Authority was that the Honourable Housing Minister issued directions u/s 164 and the authorities had not complied with the said directions was also rejected and consequently the appeal was dismissed. Both these orders are under challenge in this writ petition.

5. On behalf of the petitioner it is contended by the learned Counsel in the first instance that the premises were not the authority's premises as contemplated by section 2(4) of the Maharashtra Housing and Area Development Act, 1976 and consequently no proceedings u/s 66 could have been initiated. As proceedings were initiated without the authority of law the orders of the authorities below have to be set aside. The second contention was that the notice for eviction were to be served on both the original allottee and the occupant. In the instant case no notice was given to the original allottee and consequently the action was bad. Various rulings were referred to in support of the said submission. The last submission was that application for regularisation had been moved on 11th July 1987 before the issuing of the show cause notice. In these circumstances the authorities could not have proceeded in the matter of eviction without first considering the application of the petitioner for regularisation. Reliance was placed on circulars issued by the authorities and more specifically Circular dated 27th December 1983.

On the other hand learned Counsel for the respondent No. 2 contended that respondent No. 1 has acted within the four corners of the provisions of the Act and that the matter was covered by the judgment of the Single Judge of this Court in the case of *Jiwan Nath Razdan Vs. The State of Maharashtra and others*, . It was further contended that at the time of issue of the show cause notice the entire consideration had not been paid and consequently the premises did not cease to be the authority's premises and consequently the authorities had jurisdiction to issue the show cause notice and evict an unauthorised occupant from the premises. In so far as regularisation is concerned it was pointed out that even the Circulars cannot go against the express provision of the Act. In the instant case the Circular was issued only to assist those cases where there was subsisting agreement between the allottee and occupant and for some reason the allottee could not move an application. The said Circular was issued to avoid legal complications. Relevant translation of para 3 of the circular

dated 29th December, 1993 has been placed on record. It is also contended that show cause notice was issued both to the petitioner and respondent No. 1.

6. In so far as the judgment of the Single Judge of this Court in *Jiwan Nath Razdan* (supra), Counsel appearing for the petitioner advanced arguments that the said judgment should be reconsidered and the matter be referred to a Division Bench: It was his contention that the Single Judge had not correctly appreciated the various provisions of the Act, Rules and Regulations while considering as to what is the Authority Premises. Shri Thorat has drawn my attention to the definition of "Authority Premises" as defined under sub-section 2(4) and the provisions of Regulation 21 of the Maharashtra Housing and Area Development Board (Establishment, Sale, Transfer and Exchange of Tenements) Regulations 1981. There is a proviso to Regulation 21 (4) which says amongst others that where allottees have paid the full purchase price and there are no outstanding dues due to the authority and the property is not yet duly conveyed to the Society, Company or allottee as provided in the Regulation the tenancy executed in favour of the Housing Society, Company or allottee shall stand terminated and the building shall cease to be the Authority Premises and the Housing Society or Company or the allottee as the case may be shall hold the building as owner thereof. It was contended that respondent No. 2 had paid all the amounts and as such the premises had ceased to be Authority Premises. However, Counsel for respondent No. 2 referred to the letter dated 30th January 1990 from the Office of the Estate Manager to the Chairman of the Society in which the suit flat is situated wherein it is mentioned that a revised cost of Rs. 2,09,309/- has to be paid by the Society to the authority. It is, therefore, his contention that on the date the show cause notice was issued u/s 66 all the money due and payable had not been paid and consequently the arguments that the premises ceased to be Authority Premises has no force. In the light of the correspondence on record, it is not necessary to go into the question as to whether the judgment of this Court in the case of *Jiwan Nath Razdan* (supra) requires reconsideration in the light of the material that the entire consideration had not been paid. Once that is rejected the judgment this Court applies on all fours to the case in hand and the contention of the petitioners that the premises is not an Authority Premises has to be rejected.

6A. The second submission on behalf of the petitioners that u/s 66 the petitioner alone could not be singled out and notices had to be issued to the respondent No. 2 is also contrary to the facts. In fact, this submission is not available to the petitioner. A perusal of the order of the Competent Authority shows that a show cause notice apart from the petitioner was also issued to respondent No. 2. The show cause notice against respondent No. 2 was dropped as the Competent Authority held that it could not be said that the petitioner had committed any illegality and as such it could not be said that he was an unauthorised occupant.

The last submission is in the matter of regularisation. Admittedly, the premises belong to respondent No. 2 who was an allottee and during the course of these

proceedings has paid the entire amount. The petitioner no doubt had moved an application for regularisation. It is inconceivable as to how the premises belonging to another can be transferred to a person in occupation without the consent of such a person who was allotted the premises, if the respondent No. 2 was evicted from the premises, then the question of respondent No. 1 allotting the premises to another perhaps could arise. The reliance placed upon the circulars is totally misplaced on a reading of the circulars as already pointed out by the Counsel for respondent No. 1. The question of the authority regularising the occupation of the petitioner when there is a lawful allottee who has paid the consideration would be without the authority of law. No provision has been shown in the Act or the Regulations whereby an allottee could be evicted and a person in an unauthorised occupation could be regularised.

7. In view of the above, Rule discharged. In the circumstances of the case, there shall be no order as to costs.

8. At this stage Counsel for the petitioner prays that the order be stayed for a further period of eight weeks. This Court as far back as 22nd June 1990 has declared the law as to what are Authority Premises. In view of the same the question of stay does not arise. Stay refused.

9. Rule discharged. Petition dismissed.