
(1984) 11 BOM CK 0004
In the Bombay High Court
Case No : Writ Petition No. 461 of 1981

Bai Hanifabai Dada Tofique

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-11-1984

Acts Referred:

Citation : (1984) 86 BOMLR 653 : (1985) MhLj 134

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

Bharucha, J.—This petition challenges the continued requisition of a room on the 2nd floor of a building situated at 113, Sarang Street, near Crawford Market, Bombay - 3. The petitioner is the owner of that building.

2. The facts, as I have gathered from both the sides, are these: On April 29, 1952 the then Government of Bombay requisitioned the said room "for a public purpose namely for housing Government Servant". On April 10, 1954 the said room was allotted to the second respondent. Clause 8 of the allotment order required the second respondent, in the event of his ceasing to be in Government service in Bombay for any reason whatsoever to immediately inform the Controller of Accommodation and hand over vacant possession of the said room to him within two months from the date on which his Government service ceased. The second respondent retired from Government service on March 31, 1980. On February 28, 1981 the petitioner wrote to the Government and informed it of the retirement of the second respondent and called for derequisition of the said room. On April 8, 1981 the Government commenced eviction proceedings against the second respondent. In March 1981 this petition was filed. On April 30, 1981 the second respondent's son was employed by the Government. On September 8, 1982 the said room was allotted to the second respondent's son, The petition was then amended to challenge the allotment order dated September 8, 1982.

3. It was submitted by Mr. Madekar, learned advocate for the petitioner, that the

order of requisition had lapsed because the Government had not availed of the said room within two months of the retirement of the second respondent. In this regard he relied upon Clause 8 of the allotment order, to which I have referred. He also submitted that the allotment order dated September 8, 1982 in favour of the second respondent's son was mala fide and was intended to perpetuate the illegal occupation by the second respondent of the said room after his retirement.

4. Mr. Lokur, learned Counsel for the respondents, stated that the Government's accommodation department had not been aware that the second respondent had retired from service until the petitioner so informed it by his letter dated February 28, 1981, and that immediately thereupon eviction proceedings against the 2nd respondent had been commenced. He submitted that it was the policy of the Government to allot premises to those Government servants one or other of whose parents had, until retirement, been in Government service and had been in occupation of the same premises. In his submission, therefore, the allotment to the second respondent's son by the order dated September 8, 1982 was valid and the said room was still required for serving the public purpose of housing a Government servant.

5. I am surprised that the accommodation department of the Government does not keep a record of when Government servants to whom requisitioned premises have been allotted are due to retire, and that they should have to rely upon the landlords whose premises have been requisitioned for such information. The rationale of the requisitioning of premises is that they will serve a higher public purpose; here, as in many cases, that of housing a Government servant. That the Government should allow such requisitioned premises to be occupied beyond the reasonable period of 2 months by retired Government servants defeats the public purpose for which the premises were requisitioned. On that count alone the order of requisition of such premises deserves to be set aside.

6. In the present case the second respondent, the allottee of the said room, retired on March 31, 1980. The accommodation department of the Government came to know this only when the petitioner informed it by his letter dated February 28, 1981. For nine months, therefore, the Government permitted the use of the said room for a purpose other than the public purpose for which it was requisitioned. Hence, the order of requisitioning dated April 29, 1952 deserves to be quashed and set aside.

7. There is more. The dates that I have been given speak eloquently of mala fides. After receipt of the petitioner's letter dated February 28, 1981 eviction proceedings were commenced against the second respondent on April 8, 1981. On April 30, 1981 the second respondent's son was employed by Government. On September 8, 1982 the said room was allotted to him. There can be little doubt that the allotment of the said room to the second respondent's son was intended only to permit the second respondent to continue to occupy the said room and was not intended to subserve the public purpose for which the said room had been requisitioned.

8. Mr. Lokur raised the objection that the second respondent's son, as the present allottee of the said room, was a necessary party to the petition. I cannot agree. It is the State which has requisitioned the said room. The cause of action of the petitioner is against the State. It is against the State that he alleges mala fides. It is for the State to evict its allottee if the court holds that the allotment is invalid. It is not necessary that the allottee should be a party to the petition.

9. The requisition order dated April 29, 1952 and the allotment order dated September 8, 1982 are quashed and set aside. The first respondent is ordered and directed to hand over to the petitioner vacant possession of the said room on or before January 1, 1985.

10. The first respondent shall pay to the petitioner the costs of the petition.

11. Rule accordingly.