

(1980) 11 BOM CK 0018
In the Bombay High Court
Case No : Misc. Petition No. 678 of 1977

Devi John Vazirani

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 26-11-1980

Acts Referred:

Bombay Land Requisition (Exemption) Rules, 1948 — Rule 4, 5
Bombay Land Requisition Act, 1948 — Section 19(2), 5, 6

Citation : AIR 1981 Bom 152

Hon'ble Judges : Parekh, J

Bench : Single Bench

Advocate : N.K. Madnaney, for the Appellant; F.T. Sikandar, for the Respondent

Judgement

1. The petitioner's case is that she is a member of the Sindhi Immigrants Co-operative Housing Society Limited (for brevity's sake hereinafter referred to as "the said Society"): That the said Society allotted to her a plot bearing No. 107-A. That she put up a building thereon known as John Devi Mansion consisting of four small flats. That she has in her possession two flats on the first floor. That in so far as the ground floor is concerned, she had given out one of the flats to S. P. Nayak on leave and licence basis since about 1st June, 1972.

2. It is the petitioner's case that this Nayak committed several breaches of the terms and conditions of the licence and further failed and neglected to pay the compensation due under the agreement. That she also needed this flat for her personal use and occupation. That she called upon the said Nayak to quit, vacate and deliver up vacant possession of the said flat to her. That the said Nayak turned round and pleaded that he was a protected licensee and was not liable to vacate the premises. That she thereupon filed a suit in the Small Causes Court being Suit RAE & R Suit No. 578/ 2656 of 1975 for recovery of possession of this flat. That grounds on which she sought this decree were (a) that Nayak had failed and neglected to pay the compensation and/or was in arrears, (b) that he was committing nuisance, and (c) that she required the premises for her bona

fide use and occupation. That Nayak did not appear in these proceedings. Evidence was led on her behalf. During the course of evidence, the deposition of her witness was confined to Nayak being in arrears of compensation and/or rent and that Nayak was committing nuisance. Since Nayak did not appear in these proceedings, she was advised not to lead evidence on other grounds and accordingly she reserved her evidence in so far as other grounds were concerned. That an ex parte decree came to be passed on the 24th Jan. 1976.

3. It is the petitioner's case that this decree having been passed, she addressed a letter dated 30th Aug., 1976, to the Controller of Accommodation, inter alia, informing that a decree had been passed in respect of this flat on the ground floor of her building. In the said letter she also informed the Controller of Accommodation that she wanted these premises for her personal bona fide use and occupation and that in view of this the Accommodation Officer should give her a "no objection" certificate. By a letter dated 17th Sept., 1976, the Controller of Accommodation asked her to inform him as to where she was staying prior to 21st Apr., 1976 and called upon her to furnish to him a certified copy of the decree. By a letter dated the 4th Oct., 1976, she supplied the said particulars to the Controller of Accommodation and also furnished a copy of the said decree. By a letter dated 16th Oct., 1976, the Controller of Accommodation asked her to intimate to him the vacancy in the form prescribed. By a letter dated the 20th Dec., 1976 she informed the Controller that she had executed the decree on the 17th Dec., 1976 and had obtained possession. With the said letter she also returned the form intimating the vacancy duly filled in by her. That by an order dated the 3rd Jan., 1977 the Accommodation Officer informed her that he had requisitioned the flat "to save the vacancy from lapsing, pending examination of your (that is her) request". By the said letter the Controller of Accommodation also called upon her to give an undertaking not to claim compensation until her application that she required the premises for her bona fide use and occupation was disposed of. By a letter dated 8th Jan., 1977 she gave the said undertaking.

4. It is the petitioner's case that by a letter dated 7th Feb., 1977 the office of the Controller of Accommodation informed her that her request could not be acceded to and that she should hand over the possession of the premises. Thereafter the Accommodation Officer passed an order dated 31st May, 1977 for taking over possession. By a letter dated 31st May, 1977 the Controller of Accommodation asked her to hand over possession. Thereafter on 3rd June, 1977, she, the petitioner, addressed a letter to the then Chief Minister setting out the facts of her case. That thereafter in view of the threatened action, the petitioner filed the present petition.

5. It is the petitioner's case (a) that since this was a flat belonging to the Co-operative Society and/or belonging to one of its members, it was exempted from the provisions of the Bombay Land Requisition Act, 1948 and it was not obligatory on her -- the petitioner -- to give any intimation of vacancy to the Controller of Accommodation in pursuance of Section 5 or 6 of the said Act. That

if she had done so, she had proceeded mistakenly. (b) That, in any event, after the giving of such intimation by her to the Controller of Accommodation, it was obligatory on the Controller of Accommodation or his office to hold an enquiry before passing the requisition order, which the office of the Controller of Accommodation had not done. That in view of this, the said order was bad in law. (c) That the said order dated the 3rd Jan., 1977 admitted of many infirmities, viz. (i) that it was not a speaking order, (ii) that the order did not slate the purpose for which the premises were requisitioned, and (iii) that the letter dated the 3rd Jan., 1977 which was served on her, made it clear that the requisition was for the purpose to "save the vacancy from lapsing" and not for the purposes contemplated under the Act. (d) She had further contended that the property in question falls within the exempted category and cannot be the subject-matter of the requisition. In the petition the petitioner has prayed for quashing the said proceedings.

6. The respondents have resisted this petition. They have contended (a) that the petition contains several false statements and that in itself disentitles the petitioner to claim any relief, (b) that, as a matter of fact, after the petitioner had intimated the vacancy an enquiry had been held and it was incorrect to state that the Controller of Accommodation had proceeded to requisition the premises in the absence of an enquiry, (c) that the order dated the 3rd Jan., 1977 was a proper order and was not liable to be set aside, (d) that it was incorrect to state that this property was "exempted". The respondents have contended that u/s 19 (2) (iv) of the Bombay Land Requisition Act, 1948, it was open to the Government to exempt any land from the provisions of Section 5 or 6 or both and provide for the terms and conditions on which the lands should be exempted. That accordingly in the exercise of these powers the Government framed Rules known as the Bombay Land Requisition (Exemption) Rules, 1948. That the properties that came to be exempted were and are set out in a Schedule to the said Rules. Item 1 of this Schedule provides that buildings owned by a Cooperative Housing Society or the members thereof under the Bye-laws of the Society were exempted from the provisions of Sections 5 and 6 of the Bombay Land Requisition Act, 1948, provided, however, that the members were occupying the premises for their use with the permission of the State Government, and that they did not let out or part with the possession of the premises or any part thereof. That in this case, it is the petitioner's case that she had given out the premises to one Nayak and/or otherwise had let them out. That there was a clear breach of the said terms. That in view of this, it was not open to the petitioner to plead that the property was exempted from the application of Sections 5 and 6 of the Bombay Land Requisition Act, 1948, and claim exemption on that basis. That she, having committed a breach, had lost these rights and if the respondents had then proceeded to pass a requisition order, then the order was proper.

7. At the hearing of this petition, Mr. Mudnaney, the learned Counsel for the petitioner, urged that it was incumbent on the respondents to pass a speaking

order, which they had not done. That the perusal of the impugned order shows that this was and is the usual stereotype order that is issued in making a declaration that the premises had fallen vacant and requisitioning the same for a State Government servant. That the order does not indicate that there has been any application of mind on the part of the Accommodation Officer. Moreover, this infirmity could have perhaps been supplemented had the officer, who had passed the order, made and/or filed an affidavit stating that he had perused the papers and applied his mind to the facts of the case. But the officer who had passed this order and who is respondent No. 3 has not come forward to make such an affidavit. On the other hand, the affidavit is made by respondent No. 4, who was nowhere in the picture at the relevant time, and has yet come forward, to aver that Bhagwat, respondent No. 3, had passed the order after perusing the papers and applying his mind to the facts of the case. That respondent No. 4 does not even aver that he is saying so relying upon any records of his officer. Mr. Mudnaney, the learned counsel for the petitioner, submitted that such an affidavit would be of no value.

8. Mr. Mudnaney further urged that it was not proper on the part of the Accommodation Officer to merely give a declaration without passing a speaking order and/or without setting out the reasons which prompted him to make a declaration. That the enquiry under the Act is in the nature of a quasi-judicial enquiry and is not an administrative one and that it was hence obligatory on the Accommodation Officer to assign reasons. Mr. Mudnaney, the learned Counsel for the petitioner, argued that it was and is hence not open to the respondents to plead that the declaration was conclusive.

9. Mr. Mudnaney further urged that a similar position arose in the case of Narendra Jaychand Shah v. R. S. Rajadhyaksha in Miscellaneous Petition No. 37 of 1976 disposed of by Pendse, J., on 15th Oct., 1979. Mr. Mudnaney urged that the effect of such an order was considered by the learned Judge and on finding of infirmities, such as he canvassed in this case, the learned Judge had in the said matter struck down the said order.

10. Mr. Mudnaney urged that in view of this, the impugned order now be struck down.

11. Miss. Sikander on behalf of the respondents urged that the order itself states that the premises were intended for the use of a State Government Servant and this in itself constitutes a speaking order. That nothing further was required. That the affidavit in reply filed by respondent No. 4 clearly sets out the position that the order was passed after application of mind to the facts of the case and in view of this the argument of Mr. Mudnaney cannot survive.

12. Now, in so far as the contentions on behalf of the respondents are concerned, it may be stated that these were the very contentions raised in the said case of Narendra jaychand Shah v. R. S. Rajadhyaksha, Misc. Petition No. 37 of 1976 and the same were negatived. I must now negative these contentions in

this case.

13. As regards the second contention of the respondents it may be stated that what is not understandable as to why respondent No. 3, who is the person who has passed the order, has not come forward to make an affidavit. What is not understandable as to how respondent No. 4, who was nowhere in the picture at the relevant stage, has chosen to make an affidavit, and that too to the effect that the order was passed by respondent No. 3, after application of mind to the facts of the case. Not even an endorsement from the office files has been produced to show that respondent No. 3 had looked into the papers or had passed an order, after application of mind to the facts of the case. An affidavit such as this would be of no value whatsoever. In the circumstances of this case, I hold that there is no indication that the order was made after applying mind to the facts of the case.

14. In view of this, I must uphold Mr. Mudnaney's contention and in view of the infirmities pointed out by Mr. Mudnaney the order must now be struck down.

15. At the hearing of this petition Mr. Mudnaney, the learned counsel for the petitioner, also urged that the said order dated the 3rd Jan., 1977 was not only passed without application of mind to the facts but without holding an enquiry and that the order was, therefore, liable to be struck down on this ground also.

16. In response to this, Miss. Sikander, the learned Counsel for the respondents, pointed out that after the intimation of vacancy was received from the petitioner, the machinery of the office of the Controller of Accommodation went into action and as a matter of fact the Inspectors of this office visited the premises on three different occasions once on the 21st Oct., 1976 second on the 9th Nov., 1976 and for the third time on the 7th Jun., 1977. That on these occasions, the Inspectors had contacted not only the petitioner but her husband and her son and had obtained various information as regards the area which was in their actual possession at that stage, apart from the requisitioned premises. That these persons were, in fact, contacted and their say was recorded and the same was reflected in the reports filed by the Inspectors. That it may be that a show cause notice was not issued to the petitioner but then this was not necessary under the Act. That it may be that regular enquiry, as one understands the word "enquiry" had not taken place, but then in view of these statements, it cannot be said that the office of the Controller of Accommodation had made no enquiries whatsoever. Miss Sikandar stated that the fact that the Office of the Controller of Accommodation contacted the petitioner, her husband and her son must show that sufficient and adequate enquiry was made and that the Controller of Accommodation had not proceeded without holding an enquiry.

17. Now, as regards the submissions on these points are concerned, it must be stated that in view of what is stated above, it is unnecessary to go into this controversy.

18. Mr. Mudnaney next urged that Section 19 (2) (iv) of the Act provides as

follows:

"(iv) exemption of any land from the provisions of Section 5 or 6 or both and the terms and conditions on which the land shall be exempted."

That pursuant to the powers conferred under this section, the State Government had framed Rules known as the Bombay Land Requisition (Exemption) Rules, 1948. That Rr. 4 and 5 of these Exemption Rules provide as follows:

"4. The buildings specified in the first column of the Schedule hereto appended are exempted from the provisions of the section or sections of the Act specified against them in the second column on the terms and conditions specified against them in the third column of the said Schedule.

5. If any of the terms and conditions specified in Rule 4 are not complied with, the State Government may withdraw the exemption granted under Rule 4. The decision of Government shall be final."

That the relevant portion of the Schedule provides as under:

Description of buildings exempted. Section or sections of the Act from which exempted. Terms and conditions of exemption.

I.

Buildings owned by a Co-operative Housing Society or the members thereof under the bye-laws of the society.

5 and 6 (1)

The members entitled to occupy or use the premises may with the permission of such officer as the State Government may authorise in this behalf occupy the same and they shall not let out or part with the possession of the premises or any part thereof.

That reading these Rules and the Schedule as a whole what must be apparent is that if the building is owned by a co-operative society or one of its members, the provisions of Sections 5 and 6 would not apply to them. That it is true that this exemption has been granted on the terms and conditions mentioned in the schedule. That if it is the case of the respondents that the petitioner had committed the breach of these terms and conditions, then the proper course for them was to withdraw the exemption under Rule 5 of the said Rules and then purport to proceed in compliance with Sections 5 or 6 of the Bombay Land Requisition Act, 1948. But in this case it is an admitted position that the exemption has not been withdrawn as per Rule 5 of the Bombay Land Requisition (Exemption) Rules, 1948 and until and unless this exemption was withdrawn, the Controller of Accommodation could not have proceeded in consonance with Sections 5 and 6 of the Bombay Land Requisition Act, 1948.

19. Mr. Mudnaney urged that a similar position arose in the case of Taru Jethmal Lalvani Vs. D.M. Torgal and Others, which was disposed of by Mody, J., on the

11th Apr., 1980. That in that case the learned Judge had considered these provisions and that the learned Judge had clearly held that if a property was exempted under Rule 4 of the Bombay Land Requisition (Exemption) Rules, 1948 and if there was a breach, the exemption would have to be withdrawn under the Rules, before the authorities could proceed under Sections 5 and 6 of the Bombay Land Requisition Act, 1948. Mr. Mudnaney submitted that in view of this the order dated the 23rd Jan., 1977 would be unsustainable.

20. Miss Sikandar on behalf of the respondents urged that it is an admitted position that the petitioner had parted with possession of the premises and/or had let out the same without obtaining the permission of the authorities. That the petitioner having committed breach of these Rules, she was not entitled to plead any exemption and, as a matter of fact, had lost the exemption. That, if in these circumstances the respondents had proceeded to requisition the premises, their action was proper.

21. Now, it may be stated that the contention canvassed by Miss Sikandar herein was the very contention raised in the said case referred to by Mr. Mudnaney and the same was negatived. In view of the ratio laid down in the said case, Mr. Mudnaney's contention on this point must be upheld.

22. In the result, what comes about is that the petitioner must succeed and would be entitled to the reliefs in terms of prayer (a) of the petition.

23. Rule is made absolute. There will, however, be no order as to costs.

24. Petition allowed.