

**(1959) 07 BOM CK 0005**

**In the Bombay High Court**

**Case No : Misc. Petition No. 265 of 1958**

Eardley Dudley Baxter

APPELLANT

Vs

T.L. Bhagtiani and Others

RESPONDENT

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**Date of Decision : 24-07-1959**

**Acts Referred:**

Administration of Evacuee Property Act, 1950 — Section 17, 18  
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 4  
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 12, 19,  
19(1), 19(2), 19(3)  
Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 117

**Citation : AIR 1961 Bom 69 : (1960) 62 BOMLR 651**

**Hon'ble Judges : Shelat, J**

**Bench : Single Bench**

**Advocate : I.C. Dalal and Bengali, for the Appellant; Sorabjee, for the Respondent**

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## **Judgement**

1. This Petition challenges an order dated the 10th of May 1958 passed by the 1st respondent u/s 19 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954.

2. The Petitioner claims to be an occupant of flat No. 22 in a building known as "Haji Mahomed Court", Clare Road, Byculla, where he alleges he has been residing since 1950. The building "Haji Mahomed Court" was owned by one Haji Mahomed, who was declared an evacuee under the Administration of Evacuee Property Act and thereupon the property became vested in the Custodian of Evacuee Property. On or about the 10th of June 1955 by virtue of a notification issued u/s 12 of the Displaced Persons (Compensation and Rehabilitation) Act of 1954 the property became acquired property whereupon the said property became vested absolutely in the Central Government free from all encumbrances. Thereafter the property was sold by public auction to one Hardasmal Hemrajmal of Bhandara. At the material time however no certificate of sale was issued in favour of the said Hardasmal with the result that there was

no transfer of ownership in the property in favour of the auction purchaser and all rights to ownership in that property remained and continued to remain vested in the Central Government. By a letter dated 7th of July 1958 the Regional Settlement Commissioner, Bombay, in fact wrote to the said Hardasmal that although possession of the property had been handed over to him by Government, transfer of possession was on a provisional basis and therefore no sale, mortgage or lease of the property by the auction-purchaser would be permissible until full and final rights of ownership are transferred to him and a certificate of sale is issued in his favour.

3. The case of the petitioner, as set out in the petition, is that flat No. 22 was originally let out by the said evacuee to one Miss B. I. Mullan. Sometime prior to 1947 the said Miss Mullan took one Robert as her sub-tenant. In or about 1949 the said Miss Mullan left the flat whereupon the said Robert sub-let the flat in question to the petitioner ag from the middle of 1950. It is the petitioner's case that since the middle of 1950 he has been residing and occupying this flat. The said Robert died on the 10th of March 1955 as a result of a motor cycle accident and since then the petitioner has been in occupation of the entire flat.

4. In or about the middle of March 1958, the Petitioner received a show cause notice dated 11th of March 1958, a copy whereof is annexed to the Petition as Ex. A, from the 1st respondent. On the 31st March 1958, the petitioner replied to the said show cause notice alleging that the 1st respondent was not entitled to terminate his tenancy and asked the 1st respondent to discharge the said notice. On the 1st of May 1958, the Petitioner filed a written statement before the 1st respondent which contained certain other contentions, viz. that the said show cause notice was mala fide as the flat in question was not required for a displaced person but for one C, P. Shah, a subordinate of the 1st respondent, at whose instance, it was alleged, this inquiry was set up. After hearing the petitioner and considering the various written statements which the petitioner had filed from time to time in the course of the inquiry, the 1st respondent came to the conclusion that the petitioner was an unauthorised occupant of the flat and ordered him to be evicted directing that possession of the flat should be taken from him at once. There are certain allegations made in the petition as to what actually took place on the last day of the hearing of the inquiry when it is alleged by the petitioner that the 1st Respondent took from him a certain writing by means which were not bona fide and proper. Since these allegations have not been pressed by Mr. Dalai on behalf of the petitioner, they are not relevant for the purposes of this Petition and I need not therefore detain myself on them.

5. Mr. Dalai for the petitioner has challenged the order mainly on two grounds, (1) that the 1st respondent had no jurisdiction to pass the order against the petitioner and the order was bad and (2) that the show cause notice dated 10th March 1958 was vague and unintelligible and that therefore the petitioner had not been given a reasonable opportunity as is required to be done under Sub-section (2) of Section 19 of the Displaced Persons (Compensation and

Rehabilitation) Act, 1954.

6. Section 19(1) of the Act provides:

"Notwithstanding anything contained in any contract or any other law for the time being in force..... the managing officer..... may cancel any allotment or terminate any lease or amend the terms of any lease or allotment under which any evacuee property acquired under this Act is held or occupied by a person, whether such allotment or lease was granted before or after the commencement of this Act.""

Sub-section (2) then provides :

"Where any person,

(a) has ceased to be entitled- to the possession of any evacuee property by reason of any action taken under Sub-section (1), or

(b) is otherwise in unauthorised possession of any evacuee property or any other Immovable property forming part of the compensation pool; he shall, after he has been Given a reasonable opportunity of showing cause against his eviction from such property, surrender possession of the property on demand being made in this behalf by the managing officer.....".

Sub-section (3) then provides that if any person were to fail to surrender possession of any property on demand made under Sub-section (2), the managing officer may evict such person and take possession of such property and may, for such purpose, use or cause to be used such force as may be necessary.

7. On the facts of this case, as set out in the petition and the affidavit in reply, it is clear that it would be Sub-section (2)(b) of Section 19 of this Act which would be applicable to the case of the petitioner. The question, therefore, that falls for consideration is whether the petitioner was an unauthorised occupant of the flat in question at the material time.

8. In his reply to the show cause notice dated 81st of March 1958 the petitioner's case was that he was a lawful and protected tenant in respect of the flat and therefore was not an unauthorised occupant liable to be evicted u/s 19(2) (b). That case was subsequently changed, for in his statement before the 1st respondent made on the 1st of May 1958 (Ex. C to the petition) his case was that he was taken by the said Robert as a co-tenant and that Robert was held to be an authorised occupant by the Assistant Custodian in a previous inquiry made by that officer. In Para 4 of the petition the petitioner comes out with yet another version, for it is there said that he was taken up by the said Robert as a sub-tenant from about the middle of 1950. It appears from the order dated 10th of May 1958 that although the petitioner claimed to be residing in these premises since the middle of 1950, he was not able to produce any documentary evidence for his having lived continuously in the flat since 1950 and the 1st respondent

therefore held that the petitioner went in unauthorised occupation after the death of the said Robert.

9. But assuming that the case now put up by the petitioner in his petition were to be correct and assuming further that the said Robert was a lawful sub-tenant of Miss Mullan, Robert in 1950 had no right to create a sub-tenancy of the premises in favour of the petitioner. In 1950 by virtue of the provisions of the Rent Act of 1947 Robert was prohibited from creating any such sub-tenancy in favour of the petitioner and, as has been recently held by the Supreme Court, such a contract of sub-tenancy would be against public policy having been expressly barred by the statute. Therefore the petitioner in any event could not claim any right or title to the flat in question on the basis of a sub-tenancy having been created in his favour by the said Robert.

10. It was however contended by Mr. Dalai that Section 4 of the Rent Act of 1947 would not apply to this property owing to the fact that the property on its having been declared as evacuee property absolutely vested in the Central Government, and that if the Rent Act did not apply for that reason to this property, there would be no bar against subtenancy. That proposition however is not sound. Merely because the property was declared to be an evacuee property and the owner thereof was also adjudicated an evacuee, the property did not entirely vest in the Central Government. The only effect of the property having been declared to be an evacuee property as laid down in *Abdul Majid Haji Mahomed Vs. P.R. Nayak*, was that the evacuee would be prevented from exercising any rights as an owner in respect of his property and the property would vest in the Custodian for the purposes of custody, management and administration of that property. But the property by reason of its having been declared as an evacuee property would not vest in the Custodian as an owner with the rights of an owner; it would vest in him only for the purposes set out in the Administration of Evacuee Property Act. The contention of Mr. Dalai therefore that the property absolutely vested in the Central Government, that the property therefore belonged to the Government and therefore was exempt from the Rent Act cannot hold good. As I have pointed out, the property was however acquired u/s 12 of the Displaced Persons (Compensation and Rehabilitation) Act by a notification dated 10th of June 1955, and it would seem that on publication of that notification under that section the right, title and interest of the evacuee in this property as from the date of the publication of the notification was extinguished and the evacuee property became vested absolutely in the Central Government free from all encumbrances. As from the 10th of June 1955 therefore it would appear that the property belonging, as it would be, to the Central Government would be exempt by virtue of Section 4 of the Rent Act from the operation of that Act. But the fact that the property was so acquired by the Government by the notification dated 10th June 1955 would not seem to make the slightest of difference to the fact that the said Robert had no right to create a lawful sub-tenancy in favour of the petitioner in 1950, the Rent Act being at that time clearly applicable to the property in question.

11. Mr. Dalai however contended that although the Petitioner may be an unauthorised occupant, in other words, a trespasser by reason of the bar against sub-tenancy in the Rent Act of 1947, as soon as the property became an acquired property u/s 12 of the Displaced Persons (Compensation and Rehabilitation) Act, that bar would disappear and therefore on and after the 10th June 1955 the petitioner, who was then in occupation of the flat in question would have a lawful title to the premises in question. I am afraid I have not been able to appreciate this contention raised by Mr. Dalai, for if, as I have said, he had no right, title or interest in the flat in question until the 10th June 1955 and was in fact a mere trespasser, it is difficult to see how on the property having absolutely vested in the Central Government the petitioner, who had so far no right or title in the flat in question, would become thereupon either a lawful tenant or an authorised occupant. It is not in dispute that no rent bill has ever been issued either by the 1st respondent or anyone from the Evacuee Department in favour of the petitioner so as to legalise his occupation in the flat in question. It is also nobody's case that on and after the 10th June 1955 or prior thereto the occupation by the petitioner was at any time recognised by or on behalf of the 1st Respondent or the Custodian of the Evacuee Property. That being the position, the fact that the property became an acquired property on and after the 10th of June 1955 does not make any difference to the fact that the unauthorised character of the occupation of the petitioner of the flat in question is concerned.

12. But Mr. Dalai contended that since the tenancy in favour of Miss Mullan and thereafter of Robert was prior to the date when the property was declared to be an evacuee property, the 1st respondent had no jurisdiction or authority to take possession of the premises or cancel those lettings as the tenancies in favour of Miss Mullan and Robert were neither cancelled by the owner nor were otherwise terminated. He argued that Section 19 empowers the 1st respondent to cancel the leases granted in respect of a property declared to be an evacuee property and that Sub-section (2) of Section 19 comes into operation only when the 1st respondent takes action under Sub-section (1) and not otherwise. He therefore contended that inasmuch as the 1st respondent had not taken any action of cancelling the tenancy of the flat in question under Sub-section (1) of section 19, the 1st respondent had neither the jurisdiction to issue the show cause notice nor to pass the order under the provisions of Section 19(2). In my view, these contentions also are not correct. As I have said, Section 19(1) confers power on the Custodian to cancel any lease or alter the terms of such a lease in respect of an evacuee property. u/s 19(2)(a) when a person has ceased to be entitled to the possession of any evacuee property by reason of cancellation of such a lease under Sub-section (1), he has to surrender the property on demand being made in that behalf by the managing officer after a reasonable opportunity of showing cause against his eviction from such property had been given to him. So far as Sub-section (1) and Sub-section (2)(a) of Section 19 are concerned, Mr. Dalai would be right that a person in occupation of a given property can be evicted

only upon action living been taken under Sub-section (1), such as cancellation of his lease. But Sub-section (2)(b) makes it clear that if a person is "otherwise in unauthorised possession of any evacuee property" he shall on demand made therefore surrender possession and if he fails to do so, the managing officer under Sub-section (3) has the authority to evict him. Mr. Dalal's contention therefore that Sub-section (2) of Section 19 would come into operation only upon an action taken u/s 19(1) cannot be sustained.

13. Section 27 of the Act confers, finality to an, order made by an officer or authority under this Act inasmuch as it provides that an order made by an officer or authority under this Act shall be final and "shall not be called in question in any Court by way of an Appeal or revision or in any original suit, application or execution proceeding". Once there fore an order is made evicting an occupant, it would seem that it cannot be challenged in any Court of law except of course where its legality is challenged on the ground such as want of or excess of jurisdiction. As I have said, the petitioner was clearly an unauthorised occupant and being so, the 1st respondent had jurisdiction to evict him under the provisions of Section 19(2)(b) and (3) of the Act.

14. Mr. Dalai then urged that Section 19(2) makes it obligatory upon the 1st respondent to give reasonable opportunity to the petitioner to show cause against an action of eviction. He urged that the expression "reasonable opportunity" used in Section 19(2) would include a proper show cause notice which would set out how the petitioner was in unauthorised occupation, and why it was proposed to evict him from the premises in question. Mr. Dalai pointed out that the show cause notice was cyclostyled, stereotyped document, entirely vague and did not precisely state how and why the petitioner was liable to be evicted. There can be no doubt, and Mr. Sorabjee who appears for the respondents has not even attempted to justify the show cause notice, that that document is clearly a stereotyped document and the person who has signed that document and despatched it to the petitioner obviously had not taken even the trouble to cancel out portions in that show cause notice which are not applicable to the case against the petitioner. It no doubt sets out a ground for eviction viz. subletting, but the premises there described are a shop whereas the premises in question are not a shop but residential premises. It is therefore clear that the officer, who signed the show cause notice had not applied his mind nor had he exercised the slightest of care or caution required in serving such a process. But after all this is granted in favour of the petitioner, the question would be whether the fact that a proper show cause notice was not served upon the petitioner, would invalidate the ultimate order passed by the 1st respondent. In my view, it cannot be said that the indefiniteness or the vagueness of the show cause notice in any way caused prejudice to the petitioner. From the reply dated 31st March 1958, which the petitioner gave to the show cause notice, it is clear that the petitioner knew full well what he had to answer. The subsequent statements, which the petitioner made from time to time, both oral and in writing, would also show that he was fully aware of the case he had to meet. There is no dispute

that the petitioner was heard on several occasions by the 1st respondent and it was only after considering both his oral and written statements that the 1st respondent passed his ultimate order. Therefore it cannot be urged that the 1st respondent did not give to the petitioner a reasonable opportunity as required u/s 19(2).

15. Mr. Dalai urged that Rule 117 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, framed under the powers reserved to Government under this Act makes it mandatory for the 1st respondent to serve a notice as well as an order passed, that a notice has to be served upon the petitioner by registered post and that such a notice has to be of at least 15 days. It may be observed that although Rule 117 provides for the service of such a notice, the notice and the order contemplated by that rule are the ones issued or made under the Act. I do not find any provision in the Displaced Persons (Compensation and Rehabilitation) Act 1954 which makes it incumbent upon the 1st Respondent to issue a show cause notice. The mere fact however that such a notice was given does not and cannot render an order passed under the Act as either illegal or bad in law merely because the notice so served was not proper notice. Even assuming that Rule 117 were to apply, the rule is clearly of a directory or procedural nature. It is no doubt true that this rule does contain mandatory language, for it provides that every order or notice made or issued under the Act or these rules shall be served by registered post acknowledgment due and furthermore that "ordinarily a notice of at least fifteen days shall be given". But merely because a provision of law or rule contains mandatory language, it does not necessarily mean that such a rule or condition therein contained becomes a condition precedent to the acquisition of jurisdiction in taking action. It is also true that the order itself was never served upon the petitioner, but instead a letter containing the terms of the order was served upon the petitioner. The petitioner therefore knew what the contents of the order were from that letter so that he was in a position to know the contents of the order, if he chose to challenge it. So far as the show cause notice is concerned, the same reasoning would apply, for the statement which he made on the 31st of March 1958 in answer to the show cause notice clearly indicates that the petitioner was aware as to what case he had to meet although the show cause notice did not precisely state such a case. From the mere fact that the order was not served upon the petitioner and the show cause notice was not in precise terms indicating definitely as to what case he had to meet, it is not possible in the circumstances of this case to come to the conclusion that any prejudice was thereby caused to the Petitioner. This fact coupled with the fact that R. 117, even if it were to be applicable, is merely of a directory nature, the order passed by the 1st respondent cannot be said to be affected by either of these two defects. In *Jethanand Moorjmal Metha v. N S. Vamia*, Misc. Petn. No. 216 of 1956, D/- 10-10-1956 (Bom) (Unrep.) Mr. Justice Tendolkar observed with reference to this very rule that although it required that an order shall be served by registered post, it did not necessarily follow therefrom that if it were not served it did not

take effect, and that though the word "shall" is undoubtedly a word of compulsion or obligation, it did not follow therefrom alone that the rule was mandatory and not procedural only. The view taken by Mr. Justice Tendolkar of Rule 117 being of a directory nature was approved of by a Division Bench of this Court in *State of Rmbav v Morarji* 61 Bom. L.R, 318.

16. That being the position, the mere fact that the 1st respondent had not carried out the terms of Rule 117 cannot adversely affect the ultimate order passed by him. The two contentions there tore raised by Mr. Dalai cannot be upheld.

17. In the petition the petitioner has also challenged the order as well as the show cause notice on the ground of their having been made or issued mala fide and various allegations are set out in the petition to show how the notice and the order were issued and/or made mala fide. Mr. Dalai, however, stated before me that he was not pressing" the question as to mala fide and therefore it does not become necessary for me to go into that question. In view of the fact that I have decided this petition on the only two contentions raised by Mr. Dalai, it also does not become necessary for me to go into certain preliminary questions raised by the Respondents in the affidavit in reply.

18. The petition therefore fails and is dismissed with costs, costs fixed at Rs. 250/-.

19. Petition dismissed.