
(2001) 10 BOM CK 0018
In the Bombay High Court
Case No : Writ Petition No. 807 of 1993

Gajendrakumar Pribhovandas Bhammar and Others	APPELLANT
Vs	
The State of Maharashtra	RESPONDENT

Date of Decision : 04-10-2001

Acts Referred:

Bombay Land Requisition Act, 1948 — Section 4, 4(1), 6, 6(1), 6(4)(a)
Constitution of India, 1950 — Article 226
Defence of India Act, 1962 — Section 29, 35(1)

Citation : (2001) 4 ALLMR 745 : (2002) 1 BomCR 607

Hon'ble Judges : R.M. Lodha, J;D.B. Bhosale, J

Bench : Division Bench

Advocate : S.C. Dharmadhikari, instructed by Haresh Mehta and Co, for the Appellant; D.J. Menezes, Anuj Narula and Shyam Mehta, instructed by D.B. Madekar, for the Respondent

Final Decision : Allowed

Judgement

D.B. Bhosale, J.—The building "Mukund Mansion", formerly known as "Hirji Mansion" situate at 14, Darabshaw Lane, Off. Napean Sea Road, Bombay, was previously owned by one Morarji Cooverji. This property was purchased by the petitioners together with 4th and 5th respondents by registered Deed of Conveyance dated 27th December, 1962 and thereby became owners of the said property.

2. The 1st and 2nd respondents by order dated 26th December, 1951, requisitioned one flat bearing No. 5 on the second floor of the said building in purported exercise of its power under sub-section 4(a) of Section 6 of the Bombay Land Requisition Act, 1948 (for short "Act of 1948"). The said order of requisition had been challenged by Morarji Cooverji, the predecessor in title of the petitioners, in Miscellaneous Petition No. 53 of 1959. A consent order came to be passed on 9th December, 1959. In pursuance thereof 1st and 2nd respondents derequisitioned Flat No. 5, on the second floor of the said building

and handed over possession thereof to said Morarji Cooverji. In turn simultaneously Morarji Cooverji gave vacant possession of the Flat No. 2 on the ground floor to the 1st and 2nd respondents. The flat No. 2 on the ground floor is the subject matter of the instant Writ Petition (for short "said flat"). In pursuance of the consent order passed by this Court, the 2nd respondent issued order dated 29th February, 1960 thereby requisitioned the said flat, under clause (a) of sub-section (4) of section 6 of the Act of 1948, for the public purpose, namely for housing Government servants.

3. The said flat at the relevant time was in possession of R. R. Garde who was put in possession by the allotment order dated 3rd January, 1970. On 24th July, 1991, the order of eviction u/s 8(c) of the Act of 1948 was passed as the allottee had acquired an alternative accommodation of his own and his continuance in the requisitioned premises was, therefore, not in conformity with the purpose of the requisitioning. Significantly, a copy of the order of eviction passed against Shri Garde was endorsed to Kiran Kumar Tulpule 4th respondent and others, namely the co-owners comprising of the petitioners and 4th and 5th respondents. The copy of the order of eviction was not endorsed to 3rd respondent, who is son of the erstwhile owner of the building Mukund Mansion. The petitioner, in August, 1991, informed the 2nd respondent not to hand over possession of the said flat to any other person. The 2nd respondent, in turn by letter dated 6th September, 1991 informed the petitioners that 3rd respondent by his letter dated 13th August, 1991, claimed possession of the said premises in pursuance of the order passed by this Court in Miscellaneous Petition No.53 of 1959. The said letter further informed the petitioner that the premises will be restored to the right person, only after holding necessary enquiries as contemplated u/s 9(1) of the Act of 1948, and after giving an opportunity of being heard to all concerned. A letter dated 6th December, 1991, was addressed to the petitioner No. 3

4. The petitioners In reply to the letter dated 6th September, 1991, claimed possession of the said flat being owners of the property. It was stated by the petitioners that father of the 3rd respondent has sold the said building "Mukund Mansion" to them and they deemed to have stepped into the shoes of the ex-landlords. Respondent No. 3 has no right, title and interest in the said property after it was transferred in December, 1962, to the petitioners and 4th and 5th respondents.

5. The hearing of the enquiry contemplated u/s 9(1) of Act of 1948 was initially held on 8th August, 1992 and then on 18th August, 1992. During the enquiry the 3rd respondent claimed right In the said flat on the basis that it was taken in possession by the 2nd respondent from Morarji Cooverji and, therefore, he is entitled for its possession being his legal heir. It transpired from the letter of 3rd respondent addressed to the Minister, G.A.D. Government of Maharashtra dated 6.3.1982, that the 3rd respondent had filed Writ Petition No. 460 of 1992, seeking withdrawal or cancellation of the requisitioning and for getting back the possession of said flat. The petitioners and 4th and 5th respondents were not

impleaded as party in the said Writ Petition. Our attention was invited by the learned counsel, for the petitioners, that the transaction of sale to the petitioners by the father of respondent No. 3 was suppressed in the said writ petition. The said writ petition came to be disposed of by recording the statement of the learned counsel of the 2nd respondent that the proceedings for eviction had already been initiated against the allottee and In view thereof writ petition was allowed to be withdrawn.

6. The 2nd respondent by an order dated 10th March, 1993, passed in the inquiry u/s 9(1) of the Act of 1948, directed that upon the premises being derequisitioned the possession thereof shall be handed over to the 3rd respondent. That order was passed only on the ground that the possession of the premises was taken over in the year 1960 from the father of 3rd respondent and therefore, Requisitioning Authority was bound to restore the possession to the same person from whom the possession of the property was taken. The order of 2nd respondent dated 10th March, 1993, is impugned In the instant writ petition, passed u/s 9(1) of the 1948 Act. It is very pertinent to note that, subsequent to the aforesaid order, the 2nd respondent by his letter dated 26th March, 1993, confirmed that according to the records of his office, the names of petitioners and 4th and 5th respondents have been recorded as co-owners since 1963.

7. The 1st and 2nd respondents have not filed return. The 3rd respondent the beneficiary of the impugned order, filed lengthy affidavit in reply, controverting the case made out by the petitioners. In short, the case of respondent No. 3 is that although the building known as Mukund Mansion has been conveyed by his father by the registered Deed of Conveyance dated 27th December, 1962, he Is still entitled to get back the possession of the said flat as the possession of the same was given to the respondent Nos. 1 and 2, by his father. He also set up the case that though de facto possession of the said flat was with the State of Maharashtra having requisitioned the same, the legal possession of the said flat always remained with his father and he has further denied that his father conveyed to the petitioners the right, title and interest of the said flat on the ground floor. The petitioners although hold title of the said property including the requisition flat cannot claim the possession as the same always remained with his father. The respondents has also contended that the said flat was given in lieu of Flat No. 5 on the second floor. In view thereof the claims that upon derequisitioning the premises in question, his rights to use and occupy the said flat have been revived and by reasons of Deed of Conveyance, he shall now be a tenant of the petitioners and respondent Nos. 4 and 5.

8. We, heard the learned counsel appearing for the parties at length. Perused the copy of the writ petition with the annexure thereto and the affidavit in reply filed by 3rd respondent. The nub of the petitioners argument Is that the 2nd respondent was not justified In passing the impugned order dated 10th March. 1983 thereby handing over the possession of the said flat to the 3rd respondent who admittedly does not hold the title of the said premises. In other words, 2nd

respondent having recognised the title of the petitioner and 4th and 5th respondent in pursuance of the Deed of Conveyance dated 26th December, 1962, was not justified in passing the impugned order thereby directing to hand over the possession to the 3rd respondent. Per contra, the submission of 3rd respondent is two fold. Firstly, that he is entitled for the possession of the said flat as the same was taken in possession by the 1st and 2nd respondents from his father in the year 1960 and secondly, he is entitled for the possession although he has lost title of the said property because upon requisitioning of the said flat, all rights of the 3rd Respondent's father, to use and occupy the said premises were suspended and on derequisitioning of the same their rights have been revived and by reasons of Deed of Conveyance, they shall now be tenants of the petitioners and 4th and 5th respondents.

9. Undisputedly, the requisitioning authorities recognised the petitioners and the 4th and 5th respondent as co-owners of the property. The 3rd respondent in his affidavit has admitted that the property stands conveyed by Deed of Conveyance dated 21st December, 1962 to the petitioners. The petitioners and 4th and 5th respondents admittedly have been receiving and enjoying the compensation in respect of the said flat, from the Controller of Accommodation since December, 1962 until date. The Conveyance Deed of 1962 is also on record of the Controller of Accommodation. The rent receipts have also been issued by the petitioners in favour of the Controller of Accommodation. Thus for all intends and purpose, the 1st and 2nd respondents have recognised the title of the petitioners and 4th and 5th respondent in respect of the said premises and have acted on the basis that the co-owners have full and effective title and interest thereto. Moreover, the copy of the order of eviction passed against Shri Garde, the original allottee was endorsed to the co-owners comprising of the petitioners and 4th and 5th respondent. All these overt acts, in our opinion, admit only one inference that since 1962 the petitioners and 4th and 5th respondents are owners of the property in question and their right as a owner has been recognised by all the respondents.

10. In the backdrop of this, the enquiry was conducted by the respondent No. 2 u/s 9(1)(3) of the Act of 1948. The respondent No. 2 by his order dated 10th March, 1993, decided to restore the possession of premises to the 3rd respondent the son of erstwhile landlord from whom the possession of the said flat was taken after requisitioning the said flat in the year 1960. The order has been passed u/s 9(3) after giving an opportunity of being heard to all parties concerned, in favour of the respondent No. 3. The para Nos. 5 and 6 in the Impugned order read thus:

"5, Under the Bombay Land Requisition Act the requisition of the premises is of temporary nature and for the temporary period and it is binding on the Government whilst returning the same back to make necessary enquiry and to give possession to the proper person. Whilst derequisition of premises requisitioned, it is binding on the Government to hand over the possession of the

said premises to the person or his heirs against from whom the requisition of the premises is made without taking into consideration the question as to who Is the owner of the said premises. In this manner while doing act of necessary enquiry and while handing over possession of the said premises to proper person, if any other person claims right then he may adopt proper judicial proceeding. No obstruction to right of that person claiming "AGREEMENT BETWEEN PETITIONER AND THE RESPONDENT."

1. Agreed that Shri Taskar the allottee of the Requisition premises being Flat No, 5, 2nd floor Hirji Mansion Darbashaw Road, Bombay to vacate the said Flat No. 5 on his retirement of when his new building at Chembur which is under construction is ready for occupation whichever is earlier.

2. Agreed that on the said Shri Taskar the Government Allottee vacating the Requisitioned Flat No- 5 the Government to hand over possession thereof to the petitioner.

3. Agreed that the petitioner to split up the said Flat No. 5 Into two tenancies by partition one a 4 room Flat and the other a 3 room flat each as marked on the plan annexed hereto. The petitioner to issue two separate rent bills for the said two tenancies from the date of release of the flat from requisition.

4. Agreed that the petitioner to give the said 3 rooms Flat marked A.B.C.D. in blue colour boundary lines on the plan annexed hereto to the petitioner's cousin Vijayaben on monthly tenancy basis and the petitioner to give the said 4 rooms flat marked E, F, G, H, in red colour boundary line on the plan annexed hereto to Shivilal, Prabhulal, Pravin and Madhusudan the 4 sons of Ratansi Hirji as representing the Joint family Branch of Hirji Bhojraj on a monthly tenancy basis. It is further agreed that If at any time the said 3 rooms flat Is not in the occupation of the said Vijayaben or that any other person is in occupation thereof the Government would be at liberty to requisition the said 3 rooms Flat. It is further agreed that if any time the said 4 rooms Flat is not in the occupation of the said 4 sons of Ratansi Hirji viz. Shivilal, Prabhulal, Pravin and Madhusudan or that any other person is in occupation of the said 4 room flat the Government would be at liberty to requisition the said 4 room flat.

5. Agreed that at the time Government hands over possession of the Flat No. 5 to the petitioner, the petitioner to send an intimation of vacancy and hand over simultaneously vacant possession of the 3 room flat No. 2 on the ground floor of Hirji Mansion at present occupied by the said Vijayaben. Government to be at liberty to requisition the said 3 room Flat No. 2 on the ground floor of Hirji Mansion. The petitioner agrees not to challenge the order of Requisition to be passed by Government in respect of the said Flat No. 2 on the ground floor of Hirji Mansion.

6. On requisitioning Flat No. 2 on the ground floor of Hirji Mansion, after receipt of intimation for the same and immediately after getting possession of the flat. Government to derequisition Flat No. 5 to enable the petitioner to create

tenancies as stated above."

12. In this background, the premises in question came to be requisitioned by the respondent Nos. 1 and 2 on the ground floor, after the receipt of intimation from the landlord as contemplated u/s 6(1) of Act of 1948 and immediately, after getting possession of the said flat, the respondent Nos. 1 and 2 de-requisitioned Flat No. 5 as agreed in the consent terms. From the consent terms it is abundantly clear that the father of respondent No. 3 gave intimation and as Owner-Landlord handed over vacant possession of the flat in question on the ground floor. The said flat prior thereto was occupied by one Vijayaben, who appears to have vacated the said flat after consent order dated 9th December, 1959. It was also agreed that the said flat would be requisitioned by the respondent Nos. 1 and 2 only If at the relevant time it was vacant and not in possession of any person. The consent terms, clearly indicate that the flat In question was vacant and only on receipt of intimation from landlord u/s 6(1) of the Act of 1948, was requisitioned.

13. It would be advantageous, at this stage to refer to relevant provisions of the Act of 1948, for better appreciation of the submissions advanced before us. Sub-section (1) (3) (4) and (7) of section 9 of the 1948 Act reads thus,:

"9. (1) The State Government may, at any time, release from requisition any land requisitioned or continue to be subject to requisition under this Act.

9. (2) x x x

9. (3) When any land is to be released from requisition, the State Government may, after making such inquiry, if any, as it deems fit, specify by order in writing the person to whom possession of the land shall be given.

9. (4) The delivery of possession of the land to the person specified in an order made under sub-section (1) shall be a full discharge of the State Government from all liability in respect of such delivery but shall not prejudice any rights in respect of the land which any other person may be entitled by due process of law to enforce against the person to whom possession of the land is so delivered.

9.(5) xxx

9.(6) xxx

9.(7) For the purpose of releasing any land from requisition the State Government may, by order, direct the person to whom the State Government had given possession of such land and other person, if any, in occupation of such land to deliver possession thereof to the officer authorised in this behalf by the State Government."

14. Section 9(1) empowers the Government to release from requisition, any land requisitioned or continued to be subject of the requisition. Subsection (3) contemplates enquiry to be conducted while releasing the land from requisition as to whom possession of the land shall be given. The enquiry contemplated

under sub-section (3) becomes necessary and is required only if events have taken place subsequent to requisition. In such enquiry the facts anterior to handing over vacant possession of the landlord to the Requisitioning Authority are irrelevant. "Possession" is a polymorphous term which may have different meaning in different contexts. The word "possession" occurring in sub-section (3) signifies naturally possession to a person who is entitled to possession. The person who hands over possession of premises to Requisitioning Authority shall be entitled to delivery of such premises on derequisition if his right to hold possession thereof subsists. On the other hand if in view of events having taken place subsequent to requisition, the person handing over possession has ceased to have any right, title or interest to hold possession of such premises, he cannot claim restoration of possession on derequisition. Sub-section 4 provides delivery of the land to the persons specified in order made in subsection (1), without prejudice any rights in respect of land which any person may be entitled by due process of law to enforce against the person to whom the possession of the land is so delivered. Sub-section (1) of section 4 defines land, which includes benefits to arise out of land and buildings and all things attached to the earth or permanently fastened to the buildings or things attached to the earth.

15. Section 6 of the Act of 1948 reads thus :

"(1) If any premises situate in an area specified by the State Government by notification in the Official Gazette, are vacant on the date of such notification and wherever any such premises are vacant or become vacant after such date by reason of the landlord, the tenant or the sub-tenant, as the case may be, ceasing to occupy the premises or by reason of the release of the premises from requisition or by reason of the premises being newly erected or reconstructed or for any other reason, the landlord of such premises shall give intimation thereof in the prescribed form to an officer authorised in this behalf by the State Government.

(2) The intimation shall be given (by registered post) within one month of the date of the notification in the case of premises which are vacant on such date and in other cases within seven days of the premises becoming vacant or becoming available for occupation.

(3) A landlord shall not, without the permission of the State Government, let, occupy or permit to be occupied such premises before giving the intimation and for a period of one month from the date on which the intimation is received.

(4) Whether or not an intimation under sub-section (1) is given and notwithstanding anything contained In section 5, the State Government may by order in writing -

(a) requisition the premises [for (any public purpose) and may use or deal with the premises for any such purpose) in such manner as may appear to it to be expedient; or

Provided that, where an order is to be made under clause (a) [requisitioning the] premises in respect of which no intimation is given by the landlord, the State, Government shall make such inquiry as it deems fit and make a declaration In the order that the premises were vacant or had become vacant, on or after the date referred to In sub-section (1) and such declaration shall be conclusive evidence that the premises were or had so become vacant.

(5) Any landlord who falls to give such intimation within the period specified in subsection (2) shall, on conviction, be punishable with imprisonment for a term which may extend to three months or with fine or with both and any landlord who lets, occupies or permits to be occupied the premises in contravention of the provisions of sub-section (3), shall, on conviction, be punished with imprisonment for a term which may extend to one year and shall also be punished with fine.

Explanation. -- For the purposes of this section -

(a) premises which are in the occupation of the landlord, the tenant or the sub-tenant, as the case may be, shall be deemed to be or become vacant when such landlord ceases to be in occupation or when such tenant or sub-tenant ceases to be in occupation upon termination of his tenancy, eviction, assignment or transfer in any other manner of his interest In the premises or otherwise, notwithstanding any instrument or occupation by any other person prior to the date when such landlord, tenant or sub-tenant so ceases to be In occupation;

(b) premises newly erected or reconstructed shall be deemed to be or become vacant until they are first occupied after such erection or reconstruction."

The requisition order in respect of flat in question was passed u/s 6(1), which requires that the landlord of vacant premises on his own to give intimation in the prescribed form to an officer authorised by the State Government for the purpose of requisition of the vacant premises. The intimation u/s 6(1) requires to be given within one month of the date of notification in the Official Gazette Issued by the State Government. The landlord of such premises shall not without permission of the State Government or permit to be occupied before giving intimation and within period of one month from the date on which the intimation is received. Looking to the procedure laid down u/s 6 of the Act of 1948, it is clear that the burden is imposed on the landlord to give Intimation of the vacant premises to the State Government for the purpose of requisitioning of such premises.

16. The respondent No. 3 in his affidavit in reply has set up a specific case of tenancy. We deem it fit to quote some of the relevant portions from his affidavit to appreciate, submissions advanced before us. The portion from paras 6, 7, 8 and 11 reads thus :

"6.1 say that at the time of conveying the property my father alongwith other family members were in use and occupation of the entire 1st floor of the building

and also were entitled to flat being Flat No. 2 on the ground floor which was requisitioned by the State of Maharashtra under the Bombay Land Requisition Act.

7. It is thus abundantly clear that at the time when the said flat was requisitioned it was in use, occupation and possession of my father, by the reason of which he could deliver vacant possession of the said flat to the Government.

8. I say that the petitioners and the 4th and 5th Respondents are the owners of the building and therefore the rent/compensation in respect of the said requisitioned premises was obviously required to be paid to the owners of the building. I say that upon requisitioning of the premises on the ground floor being Flat No. 2 all the rights of my father to use and occupy the said premises were suspended and were held in abeyance till the premises was derequisitioned by the Government. I say that possessory rights of my father in respect of the said premises did not come to an end and were not determined by the law of land. I say that the requisitioning of the premises is essentially of the temporary nature and since the Government had no vested interest in the rights of my father upon derequisitioning of the said premises, rights of my father were revived and consequently I am lawfully entitled to receive possession thereof.

11. I say that at the time of executing conveyance my father along with other family members were in use and occupation the entire 1st floor of the building and were also entitled to jural possession of the requisitioned premises. I say that after executing the conveyance we continued to use and occupy the entire 1st floor of the building as the tenants of the landlord and our rights and respect thereof have not come to an end. Similarly our rights In respect of the requisitioned premises have not come to an end. I therefore most respectfully say and submit that upon derequisitioned premises have not come to an end. I therefore most respectfully say and submit that upon derequisitioning of the premises in question our rights to use and occupy the said premises have been revived and by the reason of Deed of Conveyance we shall now be tenants of the Petitioners and 4th and 5th Respondents as we are in respect of the 1st floor of the building."

17. In 1959, the father of respondent No. 3 was in possession of the said building as owner and by virtue of his ownership, he was supposed to be in possession of the said flat as its owner. Even if we assume, that Smt. Vijayaben was in possession of the said flat as tenant and the landlord got it vacated as agreed under the consent terms, it cannot be accepted that she was in possession on behalf of the landlord and, therefore, the right of possession of landlord stood suspended after the property was conveyed to the petitioners. Even if Vijayaben was a tenant of the said flat, the erstwhile landlord cannot claim possession on derequisitioning of the premises, stepping in her shoes. The consent terms are silent about the suspension of the right in the said premises or of so-called tenancy rights of the Morarji Cooverji or of said Vijayaben. The 3rd respondent, whose title in the Mukund Mansion and consequently the said flat,

was extinguished in 1962 itself, cannot claim any right in the said flat on derequisitioning of the said flat in 1992. It cannot be ignored that the said Vijayaben is not a party In the Instant petition and does not appear to have made any grievance whatsoever till this date. Although respondent No. 3 claims that she was his Aunt, has not brought anything on record to show that infact she was his Aunt, and was in possession Independent of late Morarji Cooverji. The conveyance deed of 27th December, 1962 is silent about the "tenancy" or "any other right" of the 3rd respondent's father in respect of said flat. Looking to the specific stand taken by the 3rd respondent for first time in the writ petition which in our opinion is after thought and cannot be accepted. In any case all these facts which are anterior to handing over possession to Requisitioning Authority are irrelevant for the enquiry u/s 9(3). section 6 of the Act of 1948, imposes obligation on the landlord to give an intimation of the premises which are vacant or became vacant after the date of issuance of notification in the Official Gazette, by reasons of landlord, tenant or sub-tenant as case may be, ceasing to occupy the premises. Meaning thereby that when the order of requisition is issued under sub-section (1) of section 6 of the Act of 1948, the requisitioned premises are vacant and not in occupation of anybody. The erstwhile landlord, in the instant petition cannot take advantage of the consent terms to say that his de facto possession, through Vijayaben at the time of requisition, entitles him to get back the premises after derequisitioning the same in 1992 when admittedly he lost the title in respect of the building "Mukund Mansion" and the said flat. Possession u/s 9(3) implies the legal right to come in possession. The person who has sold the property cannot claim any right whatsoever unless such right is expressly retained in the Deed of Conveyance. The Deed of Conveyance in the Instant petition is silent about any such right in respect of said flat.

18. Coming to the next question as to whether the respondent No.2 was justified in passing the impugned order and thereby giving possession of the said flat to the respondent No. 3. The respondent No. 3 has admitted that the property called Mukund Mansion was conveyed by executing registered conveyance deed in favour of the petitioners and 4th and 5th respondents. The respondent No. 3 also admits that he does not hold any right, title and interest in the property, save and except his claim of possession on the basis of the tenancy. Sub-section (4) of section 9 of the Act of 1948 provides delivery of possession of the requisitioned premises in question to the person specified in the order of derequisition meaning thereby to the person from whom the possession was taken or to whom order of requisition was addressed. The delivery of the possession shall fully discharge the Government from all liabilities in respect of delivery. Subsection (4) further provides that such delivery of the possession shall not prejudice any right in respect of premises which any other person may be entitled by due process of law to enforce against the person to whom possession of the premises is so delivered. In the instant petition the requisition order dated 29th February, 1959 was addressed to the landlord namely Morarji

Cooverji. The said order of requisition is not part of the record and it was tendered across the bar by the learned counsel appearing for the respondent No. 3 which is marked "X" for identification. The order of requisition dated 29.2.1960 read thus :

"Whereas intimation given under sub-section (1) of section 6 of the Bombay Land Requisition Act, 1948 (Bom. XXXIII of 1948). by the landlord in respect of the premises specified below has been received on 6th February, 1960 from Shri Morarji Cooverji. :

Now, therefore, in exercise of the powers conferred by clause (a) of subsection (4) of section 6 of the said Act, the Government of Bombay hereby requisitions the said premises for a public purpose, namely, for housing a Bombay State Government servant."

19. The order of requisition aforequoted can only be read to mean that it was issued in respect of the premises in question and it was addressed to the owner landlord. As far as title, right and interest of the Mukund Mansion are concerned, these admittedly stand transferred to the petitioners and the 4th and 5th respondents by the then owner-landlord Morarji Cooverji and thereby they stepped into the shoes of landlord referred to in the requisition order dated 29.2.1960. Therefore, in our opinion the landlord of the premises in question as on the date of derequisition alone is entitled to the possession of said flat. The 3rd respondent having ceased to have any right, title or interest in the said property, in our opinion, has absolutely no right whatsoever to claim possession of the said flat on derequisition. In view of section 9, it is the duty of the Requisitioning Authority to restore premises in question to the landlord, as on the date of derequisition, in a condition in which he had taken them in possession. If they take vacant possession from the landlord, they have to deliver the vacant possession, to the landlord whosoever he is as on the date of derequisition. Sub-sections (3) and (7) of section 9 of the Act of 1948 specifically requires that the order derequisitioning must specify the person to whom the possession of the land has to be given and such person can be a person from whom the possession had been obtained. In the instant petition, the possession was taken from the landlord, on his giving intimation as contemplated u/s 6(1) of the Act of 1948, and therefore, in our opinion the possession should be restored to the landlord who holds valid title and not the erstwhile landlord whose title has been extinguished in 1962.

20. The respondent No. 3 has placed reliance on the Judgments of the Apex Court and one unreported Judgment of the Single Judge of this Court. Heavy reliance is placed on the Judgment of Harish Chandra Nigam v. State of U.P. and Ors,. The facts of the report and the instant petition are quite different. The appellants in the report were in possession of two plots of land which had been allotted to them provisionally by the Director of Industries. The provisional allotment were later cancelled but the appellants remained in possession. While they were still in possession, the plots were requisitioned by the District

Magistrate u/s 29 of the Defence of India Act. The requisition order was addressed to the appellants who were admittedly in possession. The possession was taken over from the appellant and handed over to ordinance factory. At no stage after requisition did the Industry department tried to take even formal or symbolic possession of the said flat, however, when the property was derequisitioned u/s 35(1) the District Magistrate directed that the possession be handed over to the Director of Industries. Both the appellants challenged the said order by means of writ petition but failed before the Single Judge and the Appellate Bench. They, therefore, appealed to the Supreme Court by Special Leave Petition. In the meanwhile the appellants plot was allotted to another person. On interpretation of section 35(1) the Apex Court decided in favour of the appellant, and ordered the State to deliver possession to the appellant within six months subject to the adjudication of rights of the parties. Although the provisions of Sections 29, 35(1) of Defence of India Act, 1962 are somewhat similar to the Sections 6 and 9 of the Act of 1948, the facts of this case are totally different. In the instant writ petition the vacant possession of the said flat was delivered to the requisitioning authorities u/s 6(1) of the Act of 1948, by the then landlord in his capacity as landlord and the requisition order was addressed to the landlord and, therefore, after derequisition the possession has to be delivered to the present landlord who has stepped in the shoes of the then landlord. In view thereof in our opinion this judgment of the Apex Court has no application in the case before us.

21. The respondent No. 3 has further placed relied upon Judgment Kantendra Jaymukhlal Majumdar v. Collector of Baroda and Another, (V 53 C 23). The question arose in the report was whether the Requisitioning Authority under Bombay Land Requisition Act, 1948 on derequisition of premises, ask allottee in possession of the premises to vacate it. In the report, the premises were requisitioned for the appellant in December, 1953. There had been litigation between respondent No. 2 and the appellant in 1958 on the basis that the appellant was tenant of respondent No. 2. The suit for ejecting the appellant from the premises instituted on the ground that the respondent No. 2 required premises bona fide for personal occupation. It was ultimately dismissed on the ground that the Rent Act did not apply to the premises requisitioned by the Government in view of Section 4 of the Act of 1948. In view thereof, it was argued by the appellant that on account of respondent No. 2, treating him as a tenant and on account of the provisions of Requisition Act, he became the tenant of the landlord when the premises were derequisitioned, and that, therefore, Collector of Baroda was not competent to order him to vacate the premises. The Apex Court, in report, held that the vacant possession was taken from the landlord and, therefore, had to deliver vacant possession to the landlord. In fact this is what has been held by us in the instant petition. Kantendra Jaymukhlal Majumdar (supra) helps the petitioners.

22. The 3rd respondent has further relied on the unreported Judgment of this Court in M/s. Nenshi Monji and others v. State of Maharashtra and others,. In

that writ petition fight was between sub-tenants who were the petitioners and the State Government and the requisitioning authorities as respondents. Neither the landlord nor the principal tenant were parties in that writ petition. The petitioners who were sub-tenants of State Bank of Trivancore were in possession of the premises in question on the date of requisition. The rent of the premises occupied by the petitioners were being recovered by State Bank of Trivancore at the relevant time. In this background the question arose before this Court that whether the petitioners sub-tenant were entitled for possession of derequisitioned premises in question. This Court held in para 5 which reads thus :

"5. I have mentioned the facts in sufficient details to show that the respondents could not conceivably put up any defence to the claim made by the petitioners in this petition. Mr. Dhotre, the learned Advocate appearing for the respondents, however, has challenged the locus standi of the petitioners to file this petition because, according to him, the petitioner are not the owners of the premises. I have no hesitation in rejecting this objection because it was the petitioners from whom the possession of the premises was taken and therefore It is the petitioners to whom the possession must be restored. The Government cannot be allowed to contend that only the landlord can approach the High Court under Article 226 of the Constitution even in those cases where the possession has been taken from the tenants. Such an attitude on the part of the State will result in unjustified mischief because it will enable the landlords to obtain possession of the premises which were originally in possession of the tenants and which ought to be resorted to the tenants."

Looking to the peculiar facts and circumstances, in the said writ petition the possession was restored to sub-tenant from whom possession of the premises was taken which is not case in the instant petition, therefore, we do not think that the above unreported Judgment would any way help the petitioners.

23. The learned counsel for Respondent No. 3 lastly contended that in the Inquiry held u/s 9(3) it has been held that respondent No. 3 should be given possession of said flat since possession was taken from his father and that view being possible, this Court in exercise of extra ordinary jurisdiction should not interfere with such order. He placed reliance upon the Judgment of Apex Court In M/s. Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay. It is true that this Court In exercise of its Jurisdiction under Article 226 would not substitute a decision taken by Competent Authority simply because the decision sought to be substituted is better one but in a case where the decision taken by the authority below is erroneous in law, such decision cannot be allowed to stand. The impugned order falls in the later category.

24. In the result, we allow the writ petition and set aside the order dated 10th March, 1993, and direct the respondent Nos. 1 and 2 to restore possession of the Flat No. 2 on the ground floor in Mukund Mansion to the petitioners and 4th and 5th respondent jointly. It will be open to the 3rd respondent, if advised, to initiate a proceedings in accordance with Sub-section (4) of Section 9 of the Act

of 1948. Subject to this right of the 3rd respondent. Rule made absolute in above terms. No order as to costs.