

(2007) 08 BOM CK 0133
In the Bombay High Court
Case No : Writ Petition No. 467 of 2007

Kamal K. Sahasrabuddhe

APPELLANT

Vs

Controller of Accommodation and Others

RESPONDENT

Date of Decision : 16-08-2007

Acts Referred:

Bombay Government Premises (Eviction) Act, 1955 — Section 2
Bombay Land Requisition Act, 1948 — Section 8A, 8C(2), 9, 9(8)
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 13, 13(1), 158, 158(1), 15B
Constitution of India, 1950 — Article 226

Citation : (2007) 6 ALLMR 641 : (2008) 1 BomCR 779

Hon'ble Judges : Kumar Swatanter, C.J; Dharmadhikari S.C., J

Bench : Division Bench

Advocate : A.J. Rana instructed by Purnima Bhatia, for the Appellant; K.R. Belosey, G.P., for the Respondent

Final Decision : Dismissed

Judgement

Dharmadhikari S.C., J.—By this petition under Article 226 of the Constitution of India, petitioners are challenging an order dated 22nd December 2006 confirming the order passed by the Controller of Accommodation, Mumbai dated 12th December 2005 in respect of the premises bearing Room No. 32, Second Floor, Gopal Bhuvan, Khed Galli, Kaka Saheb Gadgil Marg, Dadar, Mumbai (hereinafter referred to as Requisitioned Premises).

2. The facts necessary to appreciate the contentions of the petitioner are these. Petitioner's husband Krishnaji was allotted requisitioned premises in the year 1954 vide allotment Order No. R-9/117-B/ Gopal Bhuvan dated 2nd May, 1954. He retired in the year 1982 and subsequently expired on 20th May, 1997.

3. It is the case of petitioner that she resides in the requisitioned premises with her son, daughter in law and grand daughter. They do not have any other place of residence. It is their case that they have been paying rent to the first

respondent which in turn was forwarded to the Landlord till 1980. Since, 1980, the rent is being paid to the owner which is a Trust. Thereafter, the building was sold to one Hasmani who in turn executed a power of attorney in favour of one Shri Guggi. All residents have been told to pay rent to said Guggi.

4. It is the case of petitioner that the rent has been paid from 1980 to 1996 and this fact was brought to the notice of the Government. However, the Government issued a notice u/s 8-C(2) of the Bombay Land Requisition Act, 1948 (for short Requisition Act), calling upon the petitioner to show cause as to why the requisition should not be discontinued in the light of the decision of Supreme Court in Writ Petition No. 404 of 1986 and Writ Petition No. 53 of 1993 Grahak Sanstha Manch and others Vs. State of Maharashtra, so also the further decision in Civil Appeal No. 2026 of 2000 M.T. Gujjar v. State of Maharashtra. Thus, the premises were sought to be de-requisitioned and that is how the subject show cause notice was issued. In reply to the show cause notice, petitioner pointed out all the above facts and further stated that there is a dispute with regard to the ownership rights of the subject premises and for no fault of the petitioner, she cannot be evicted therefrom.

5. The Controller of Accommodation, thereafter, passed an order on 12th December 2005 holding therein that the decisions of the Supreme Court would apply squarely to the facts of this case. The Maharashtra Act No. 16 of 1997 amending Bombay Land Requisition Act and other related Acts would not apply as the husband of petitioner (Government Servant) had retired before 7th December 1996. This date is the cut-off date and therefore he could not be termed as "Deemed Tenant". It is in these circumstances that the Controller concluded that the requisitioned premises need to be de-requisitioned by calling upon the petitioner to hand over vacant possession thereof. That vacant possession be so handed over was the ultimate direction issued.

6. In terms of the provisions of the Requisition Act, an appeal lies to the State Government from the order passed by the Competent Authority. The appellate powers are conferred vide Section 8-A of the Requisition Act. This provision was invoked by the petitioner by filing subject Appeal before the Appellate authority, i.e. Principal Secretary, (General Administration Department, Government of Maharashtra). The Appellate Authority by the impugned order dismissed the appeal by upholding the conclusion of the Controller of Accommodation. That is how the instant petition.

7. Mr. Rana, learned Senior Counsel appearing for petitioner contended before us that the impugned orders are contrary to law. They are vitiated inasmuch as the authorities have overlooked the provisions in the Amendment Act. He submits that there is nothing in the Amendment Act which curtails its application to the allottees/Government Servants up to a particular cut-off date. The concept is that such allottees their heirs who are in possession get the status of a "Deemed Tenant" and direct relationship is created between the owner of the premises and the allottee/occupant. Therefore, the Requisition Act cannot apply. Consequently,

the controller had no jurisdiction to pass the order of de-requisition. The premises have lost their character as requisitioned premises and certain rights which are in the nature of tenancy created by operation of law. The authorities by the impugned orders have refused to give full effect to these provisions and their conclusions are, therefore, ex facie erroneous and deserve to be quashed and set aside.

8. In support of his contentions Mr. Rana has relied upon following decisions:

A) 1954 (LVI) B.L.R. 1156 Mohandas Issardas v. A.N. Sattanathan.

B) The State of Bombay Vs. Bhanji Munji and Another, .

C) Ranchhoddas Atmaram Vs. The Union of India (UOI), .

D) W.B. Housing Board and Others Vs. Brijendra Prasad Gupta and Others, .

E) Welfare Assocn. A.R.P., Maharashtra and Another Vs. Ranjit P. Gohil and Others, .

9. He has also relied upon the decision of the Supreme Court in the case of Welfare Association v. Ranjit Gohil reported in 2003(6) Bom. C.R. 733 : (2003)8 S.C.C. 358. He has also relied upon the Ordinance and the statement of objects and reasons thereto. The Ordinance No. XXIII of 1996 further amended the Bombay Rent Act and the Requisition Act. According to Mr. Rana, upon insertion of Section 15-B in the Rent Act it is abundantly clear that the State Government had to protect 604 residential premises and about 90 non residential premises which were requisitioned in Brihan Mumbai and 138 in other districts. The intent, therefore, was to protect all such persons who are in occupation of these premises so that they do not have to be derequisitioned. He submits that the only requirement is that there should be no order passed by the competent Court of Eviction from the premises in occupation of the allottee or his heirs otherwise, the occupants are fully protected.

10. On the other hand, the Controller of Accommodation has filed a detailed affidavit and the Government Pleader submits that the order that is passed in this case is in accordance with law. It is contended that the petitioner, widow of the Government employee, who retired from service in 1982, is not entitled to protection as "Government Allottee" on the basis of the Judgment of the Supreme Court in the case of M.T. Gujjar v. State of Maharashtra. If the husband of petitioner had retired prior to 7th December 1996 i.e. the date on which the State Government introduced the amendment to the Bombay Rent Act, then, he cannot be termed as a "Deemed Tenant". Consequently, he does not enjoy the protection of the Amendment Act.

11. Reliance is placed by the learned Government Pleader on the Decisions of the Supreme Court so also the Division Bench of this Court taking identical view. Copies of these decisions/orders have been annexed to the affidavit-in-reply of the State.

12. It is denied that Controller of Accommodation beyond his jurisdiction inasmuch the premises have been after the allottee was found not be protected by any provisions or enactment Consequently, the premises retain their character as requisitioned premises and the Controller of Accommodation had authority to direct de-requisition and eviction of the allottee his heir which is what is precisely done in this case. For all these reasons, it is contended that the petition be dismissed.

13. Since reliance is heavily placed on the decision of the Supreme Court in Gujjar's case (supra), it is necessary to consider its applicability to the facts of the present case. In that decision, the third respondent before the Supreme Court was Government employee, who retired from service from 30th September 1993. He was allotted the premises under the Requisition order of 17th April 1958. This order was set aside but the third respondents before the Supreme Court continued to be in possession.

14. Earlier, the order of requisition was challenged by the appellant before this Court by filing a writ petition. The argument was that the premises cannot be continued in requisition for indefinite period. The Division Bench of this Court quashed and set aside the requisition order and that aspect of the matter had become final inasmuch as nobody challenged that decision of this Court. However, SLP No. 15788 of 1998 was filed in the Supreme Court on the basis that the earlier decision of the Supreme Court in the case of Grahak Sanstha (supra) led to Maharashtra Act XVI of 1997 being enacted, Amending Rent Act, Requisition Act and the Government Premises (Eviction) Act, with effect from 7th December 1996. This amendment was declared unconstitutional by the Division Bench of Bombay High Court on 27th July 1998. The State of Maharashtra preferred SLP therefrom, which was admitted and interim order was granted by the Supreme Court.

15. The appellant before the Supreme Court had applied for possession of the premises by giving effect to the Division Bench decision in his favour but in the light of the pendency of the proceedings before the Supreme Court, this Court refused to entertain his prayer for restoration of possession and that is how the appellant owner went to the Supreme Court. In the case of Gujjar (supra), the Supreme Court considered the relevant statutory provisions including the amendment and ultimately held as under:

In this appeal, the challenge to the impugned Judgment is to the extent it declines the prayer of the appellant for restoration of possession of the premises in question. Learned Counsel for the appellant submits that assuming the amendments inserted under Maharashtra Act No. XVI of 1997 to be valid, respondent No. 3 will still have no right to continue in occupation of the premises. For the present purpose, we would assume the Amendments to be valid (leaving the question of the constitutional validity to be determined in appeal arising out of SLP (C) No. 15788 of 1988 and on that basis examine the contention of respondent No. 3 to continue in possession of the premises.

By Amendment Act No. XVI of 1997, the statutory protection was sought to be given to the allottees of the requisitioned by providing for the State Government of the Government Allottees becoming deemed tenants of the requisitioned premises. By the Amendment Act, Clause 1-A defining "Government Allottee" was inserted. Another new provision inserted was Section 15-B providing for the State Government or Government allottees to become tenant of premises requisitioned or continued under requisition. Section 5(1-A) and Section 15-B read as under:

Section 5(1-A) - Government allottee-

(a) in relation to any premises requisitioned or continued under requisition which are allotted by the State Government for any nonresidential purpose to any department or office of the State Government or Central Government or any public sector undertaking or the Corporation owned or controlled fully or partly by the State Government or any cooperative society registered under the Maharashtra Co-operative Societies Act, 1960 or any foreign consulates, by whatever name called and on the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction)(Amendment) Act, 1996, are allowed by the State Government to remain in their occupation and possession, means the principal officer-in-charge of such office or department or public sector undertaking or Corporation or society or consulate and

(b) in relation to any premises requisitioned or continued under requisition which are allotted by the State Government for residential purpose to any person and on the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction)(Amendment) Act, 1996, such person or his legal heir is allowed by the State Government to remain in occupation or possession of such premises for his or such legal heir's own residence, means such person or legal heir.

Section 15-B - State Government or Government allottee to become tenant of premises requisitioned or continued under requisition:

(1) On the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction)(Amendment) Act, 1996 (hereinafter in this Section referred to as "the said date") -

(a) the State Government in respect of the premises requisitioned or continued under requisition and allotted to a Government allottee referred to in Sub-clause (a) of Clause 1-A of Section 5; and

(b) the Government allottee, in respect of the premises requisitioned or continued under requisition and allotted to him as referred to in Sub-clause (b) of Clause 1-A of Section 5,

shall notwithstanding anything contained in this Act or in the Bombay Land

Requisition Act, 1948, or in any other law for the time being in force, or in any contract, or in any judgement, decree or order of any Court passed on or before the 11th June, 1996 shall be deemed to have been let by the landlord to the State Government or, as the case may be, to such Government allottee, or payment of rent and permitted increases equal to the amount of compensation payable in respect of the premises immediately before the said date.

(2) Save as otherwise provided in this Section or any other provision of this Act, nothing in this Section shall effect-

(a) the rights of the landlord including his right to recover possession of the premises from such tenant on any of the grounds mentioned in Section 13 or in any other Section;

(b) the right of the landlord or such tenant to apply to the Court for the fixation of standard rent and permitted increases under this Act, by reason only of the fact that the amount of the rent and permitted increases, if any, to be paid by such tenant to the landlord is determined under Sub-section (1);

(c) the operation and the application of the other relevant provisions of this Act in respect of such tenancy.

In Writ Petition No. 98 of 1997 and other connected writ petitions titled Ravi Ramkrishnan Subramanyam v. State of Maharashtra and Ors. W.P. No. 98 of 1997, dt. 30-1-1997, a Division Bench of Bombay High Court in terms of its Judgment dated 30th January, 1997 had held that for getting benefit of becoming a deemed tenant the person has to satisfy that:

(1) the requisitioned premises were allotted by the State Government for residential purposes.

(2) on 7th December, 1996, such person or his legal heir was in occupation or possession of such premises.

(3) such person or his legal heir is allowed by the State Government to remain in occupation or possession of such premises. If an eviction order under the Requisition Act is passed by the Competent Authority, it cannot be said that the State Government has allowed such person to remain in occupation or possession of such premises or that the said person is allowed to remain in lawful, occupation or possession. After the eviction order passed by the Competent Authority, which becomes final under the Bombay Requisition Act, it cannot be said that to such an allottee, permission is granted by the State Government to continue in such occupation. Orders passed by the Competent Authority under the Requisition Act are not nullified.

(4) As against this, a person would get benefit notwithstanding any judgement, decree or order passed by the Court after 11th June, 1996. However, if the judgement, decree or order is passed prior to 11th June, 1996, it is not nullified. Therefore, the allottee would not get benefit of his provision in Judgment decrees

or order is passed prior to 11th June, 1996 even in case where the Court has granted time for vacating the premises after 7th December, 1993.

The aforesaid decision of Bombay High Court resulted in issue of the Bombay Land Requisition and the Bombay Government Premises (Eviction)(Amendment) Ordinance, 1997 (Maharashtra Ordinance No. XX of 1967) dated 26th December, 1997 thereby making amendments in Bombay Rents, Hotel and Lodging House Rent Control Act, 1947. Bombay Land Requisition Act, 1948 and Bombay Government Premises (Eviction) Act, 1955. The relevant part of the Ordinance which, we have been told by learned Counsel for respondent No. 3 became an Act later, reads as under:

2. Amendment of Section 5 of Bom. LVII of 1947--in Section 5 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "the principal Act"), in Clause 1-A

(a) in Sub-clause (a), for the words "are allowed by the State Government to remain in their occupation and possession" the words "are in their occupation or possession" shall be and shall be deemed to have been substituted with effect from the 7th December, 1996;

(b) in Sub-clause (b) for the words "such person or his legal heir is allowed by the State Government to remain in occupation or possession of such premises for his or such legal heir's own residence" the words "such person or his legal heir is in occupation or possession of such premises for his or such legal heir's own residence" shall be and shall be deemed to have been substituted with effect from the 7th December, 1996.

3) Amendment of Section 15-B of Bom. LVII of 1947--in Section 158 of the Principal Act, in Sub-section (1), after the figures, letters and words "11th June, 1996" the words and figures "or in any order of eviction issued by the Competent Authority or by the Appellate Authority, under the Bombay Land Requisition Act, 1948" shall be and shall be deemed to have been inserted with effect from the 7th December, 1996.

4) Amendment of Section 9 of Bom. XXXIII of 1948--in Section 9 of the Bombay Land Requisition Act, 1948, in Sub-section (8),

(a) for the words "were allowed by the State Government to continue or to remain in occupation or possession of such premises" the words "were in occupation or possession of such premises" shall be and shall be deemed to have been substituted with effect from the 7th December, 1996.

(b) in the Explanation-

(i) in Clause (a), for the words "are allowed by the State Government to remain in their occupation and possession" the words "are in their occupation or possession" shall be and shall be deemed to have been substituted with effect from the 7th December, 1996;

(ii) in Clause (b), for the words "such person or his legal heir is allowed by the State Government to remain in lawful occupation or possession of such premises for his own or such legal heir's residence" the words "such person or his legal heir is in occupation or possession of such premises for his or such legal heir's own residence" shall be and shall be deemed to have been substituted with effect from the 7th December, 1996.

(5) Amendment of Section 2 of Bom. II of 1956--in Section 2 of the Bombay Government Premises (Eviction) Act, 1955, in Clause (b) for the words "are allowed by the State Government to remain in their occupation and possession" the words "are in their occupation or possession" shall be and shall be deemed to have been substituted with effect from the 7th December, 1996.

(6) Removal of doubt--For the removal of doubt, it is hereby declared that the conferral of tenancy rights on a Government allottee under the provisions of the principal Act as amended by this Ordinance shall not have the effect of setting aside the decision of a Court inter parts to which effect has already been given, or in any way affect the undertaking given by or on behalf of any Government allottee in the Court.

The contention urged on behalf of the appellant is that none of the aforesaid amendments create any right in favour of respondent No. 3 who retired from service on 30th September, 1993, to continue with possession of premises in question even after retirement. Despite these amendments, respondent No. 3 cannot be treated as a "Government Allottee" and a deemed tenant, is the contention.

The continued requisition for a period of 30 years was held to be unreasonable by this Court in the case of Grahak Sanstha Manch. The effect of the said decision would have been the vacation of the premises by the State Government and the Government allottees on account of invalidity of the order of requisition. With a view to overcome it, Maharashtra Act XVI of 1997 was enacted. That has been declared unconstitutional by the High Court but appeals are pending in this Court. For the present purposes, we assume these amendments to be valid. Would Section 5(1-A) make a retired person a Government allottee?. The amendment was inserted w.e.f. 7th December, 1996. Respondent No. 3 had already retired nearly three years earlier. In the present case, we are concerned with Clause (b) of Section 5(1-A) which inter alia deals with requisitioned premises that are allotted for residential purposes. Allowing a retired person to indefinitely remain in occupation or possession of the requisitioned premises was not the object of the amendments. It is also not possible to read Clause (b) in such a manner on its plain language. The Statement of Objects and Reasons for Amendment Act "XVI of 1997" inter alia provides as under:

1. The Bombay Land Requisition Act, 1948 is enacted to provide for requisition of land for relieving the pressure of accommodation, especially in urban areas, by regulating distribution of vacant premises for public purposes, and for certain

other purposes identical thereto. Certain premises which have been requisitioned or continued under requisition under the said Act have been allotted for nonresidential purpose to many departments Central Government or public sector undertakings, corporations owned or controlled fully or partly by the State Government or cooperative societies or foreign consulates and for residential purpose to different categories of persons such as employees of the State or Central Government, public sector undertakings, corporations, or homeless persons, etc. Many of these premises have since been de- requisitioned by Government, as per Court orders or having regard to certain other circumstances. But still there are quite a large number of allottees in occupation of such premises, for a number of years, on payment of compensation as determined under the said Act. The allottees of such premises include Government servants who are still in Government service and others.

2. Under the existing provisions of Section 9 of the Bombay Land Requisition Act, 1948, as last Amended by Mah. Act No. VII of 1995, the premises which have been requisitioned on or before 27th December, 1973 will have to be released from the requisition on or before 26th December, 1997 and those which have been requisitioned after 27th December, 1973, within twenty-four years from the date on which possession of such land was surrendered or delivered to, or taken by the State Government. Further the Supreme Court in Writ Petition No. 404 of 1986 filed by the Association of Allottees of the Requisitioned premises and Writ Petitions No. 53 of 1993 and 27 of 1994 filed by the Grahak Sanstha v. State of Maharashtra has given a final decision on the 27th April, 1994 in the matter of requisitioned premises Grahak Sanstha Manch and others Vs. State of Maharashtra, , upholding the decision in the H.D. Vora Vs. State of Maharashtra and Others, and has directed that the occupants of the requisitioned premises, the continued requisition of which was quashed were bound to vacate and hand over vacant possession of such premises to the State Government on or before 30th November, 1994 so that the Government could derequisition such premises and hand over the vacant possession thereof to the landlords. Accordingly, de-requisitioning process in respect of all such premises and applying the ratio of the said Supreme Court judgement, in several other premises, has already been completed by the State Government. There are, however, as aforesaid, nearly 604 residential premises and about 90 non- residential premises, which are still under requisition in Brihan Mumbai and 138 in other districts which include requisitioned premises allotted to Government servants who are still in Government service and others.

3. As a matter of policy, the State Government has stopped requisitioning of new premises except in some special cases. As a result of this policy and also due to continued acute shortage of accommodation with Government and astronomical rise in the cost of properties in Mumbai, it would not be possible for Government to give suitable alternative accommodation to all such allottees if, applying the ratio of the said Supreme Court Judgment the Government has to vacate all the requisitioned premises. The situation is, therefore, likely to result in the

government allottees presently in occupation of the requisitioned premises being rendered without any office accommodation or homeless. It is imperative to find a solution to this grave situation and to give some kind of statutory protection to these allottees of the requisitioned premises.

4. As the landlords are generally unwilling to accept such Government allottees as contractual tenants, on payment of the standard rent and permitted increases, Government considers it expedient, in greater public interest, to make suitable provisions for providing the protection of statutory tenancy under the Rent Act to the State Government and to such Government allottees; and consequently to provide for the release of such premises from requisition.

6. As many landlords have already approached the High Court seeking requisitioned premises and the possibility of others also approaching the Court for such eviction orders cannot be ruled out, thereby frustrating the very object to this legislation, it is also considered expedient to provide in the proposed Section 3 of this Ordinance that, such conferral of statutory tenancy rights on the allottees shall not be effected by any eviction orders passed by the Court on or after 11th June, 1966 (being the date of the government decision to undertake such legislation).

It is evident that the object was to protect those who would have rendered homeless, though still in Government service, on account of the shortage of accommodation with the Government and it being not possible for the Government allottees to secure it otherwise. It is not and cannot be the case of the respondents that even after retirement, the Government had any obligation or policy to provide accommodation to retired employee. If the contention of respondent No. 3 that he became a Deemed Tenant on account of 1997 amendment is accepted, it would show that the Government intended to confer a special benefit of providing residential accommodation to occupants of requisitioned accommodation as a superannuation benefit. That is clearly not the object of the amendments. If that was the case, there would be a special class of employees. A class is allotted, while in service, with accommodation which is requisitioned which class would get the special benefit even on superannuation. This class will become tenant under the original owner after retirement with the benefits of all protections under Bombay Rents, Hotel and Lodging House Rent Rates Control Act, 1947. Their heirs and successors may also subject themselves to eviction only on proof of one or the other ground of eviction provided in the Act. Thus, if one is fortunate enough to be allotted accommodation out of the requisitioned premises while in services, he gets by way of superannuation gift, the continued tenancy and others who may not be that fortunate to get allotment of such premises, will have to vacate Government accommodation as per the relevant rules after retirement. We are unable to attribute such an intention to the aforesaid amendments.

The deletion of the words allowed by the State Government to remain from Clause (b) of Section 5(1-A) by Ordinance dated 26th December, 1997 also does

not alter the status of an occupant like respondent No. 3. The word "allowed" in the aforesaid provision may mean some positive sanction and not mere slackness on the part of the Competent Authority is not taking action for getting the premises vacated. It is evident that the accommodation or possession of the premises within the meaning of Clause (b) by a person who when allotted was a Government employee has to be on account of some right to occupy or possess the premises. The continued occupation or possession without any such right would not confer on the occupant status of a Government allottee simply on account of such person being in occupation or possession of requisitioned premises even after retirement. The reason for authorities not taking any action to get such premises being not available for allotment again to any existing Government servant. On this account, the authorities may not initiate any proceedings for getting the possession but that would not confer on the occupant the status of "Government Allottee" within the meaning of the term as defined in the Amendment Act. Thus, assuming the Amendments to be valid, we find that no right in favour of respondent No. 3 to continue with the possession of the premises even after the invalidity of the order of requisition dated 17th April, 1958 and his retirement, respondent No. 3 cannot be treated as deemed tenant.

16. Therefore, neither the Statutory Provisions nor the interim order of the Supreme Court was found to be of any assistance in cases of heirs of the Government servants/employees. Consequently, the persons in this category were directed to be evicted by the final order and direction in the Supreme Court decision. This decision has been followed in several writ petitions by this Court. Thus, assuming all amendments to be valid, the Hon"ble Supreme Court interpreted them to mean as not protecting persons like the petitioner before us. No contrary view on this point is brought to our notice.

17. The cases in which identical orders are passed have been referred to in the affidavit in reply of the Controller of Accommodation and copies of the relevant order annexed to the same.

18. We have with the assistance of the learned Counsel for both sides, perused the orders passed by this Court and we do not think that a view is taken which is either contrary to the statutory provisions or the Decision of the Supreme Court, we, therefore, decline to consider the alternate prayer of Mr. Rana to refer these matters to larger bench for reconsideration. We are of the view that the cases which have been noted by this Court and dealt with are identical to the present petition. Present petitioner also was allowed to occupy the premises. The decision of the Supreme Court in Ranjit-Gohil relied upon by Shri Rana upholding validity of the Amendment Act also does not make any Reference to these aspects. The view taken therein does not dilute the earlier Supreme Court decision in Gujjar"s case.

19. In Ranjit Gohil"s case (supra), the challenge was to the decision of this Court striking down the Amendment Act on the ground that the State has no competence to do so. It was held that it is not a colourable legislation nor there

is an attempt to over-reach judgements which are binding. The contentions, which are raised with regard to protection of various categories of allottees before us, have not been dealt with inasmuch as the only argument before the Supreme Court was of Discrimination. That argument was based upon the fact that all persons serving State Bodies form one class and, therefore, no distinction can be made with regard to only such persons who are serving and that too in Maharashtra. That argument was repelled in Paragraph 61 of Gohil's case (supra).

20. We do not find anything in that decision which would in any manner vitiate the conclusion reached by at least three Division Benches of this Court, following the view taken in Gujjar's case (supra). For this reason, we do not deem it fit to accede to the alternate prayer of Mr. Rana.

21. Mr. Rana could not dispute that the fact situation in the present case and before this Court in other cases is identical. Hence, the conclusion reached by the Appellate Authority is not vitiated by errors apparent nor can be termed as perverse, so as to call for interference in our writ jurisdiction.

Consequently, petition fails. Rule is discharged. No order as to costs.

At the oral request of Shri Rana, the interim order to continue for eight weeks.