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**(1994) 08 BOM CK 0013**

**In the Bombay High Court**

**Case No :** L.P.A. No. 110 of 1993 in Writ Petition No. 755 of 1993

Manikchand Hiralal Kasliwal

APPELLANT

Vs

Arvind Vithalrao Sawalapurkar and another

RESPONDENT

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**Date of Decision :** 18-08-1994

**Acts Referred:**

Bombay General Clauses Act, 1904 — Section 13(3), 2(11), 7(1)  
Maharashtra Land Revenue Code, 1966 — Section 13(3), 2

**Citation :** (1994) 08 BOM CK 0013

**Hon'ble Judges :** M.B. Ghodeswar, J;H.W. Dhabe, J

**Bench :** Division Bench

**Advocate :** Jugalkishore Gilda, for the Appellant; J.N. Chandurkar, J.J. Chandurkar for Respondent No. 1 and Kishore Pandey, A.G.P. for State, for the Respondent

**Final Decision :** Dismissed

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## Judgement

H.W. Dhabe, J.—Parties by Counsel. Rule. Heard forthwith.

2. The principal question urged in the instant L.P.A. is whether the Additional Collector has jurisdiction to decide the appeal preferred under clause 21(1) of the C. P. and Berar Letting of Premises and Rent Control Order, 1949 (for short "the Rent Control Order").

3. Briefly the facts relevant for determination of the above question are that the respondent No. 1 who is the landlord of the suit premises of which the appellant is a tenant filed an application before the Sub-Divisional Officer, Amravati and the Rent Controller, Badnera (for short "the Rent Controller") under Clause 13(3)(ii)(v)(vi) and (vii) of the Rent Control Order seeking permission to terminate the tenancy of the appellant. The learned Rent Controller, by his order dated 22-3-1989, rejected the application of the respondent No. 1 for permission under Clause 13(3)(ii)(v) and (vii) of the Rent Control Order but granted him permission under Clause 13(3)(vi) of the said Order only. Feeling aggrieved, both the parties filed appeals under Clause 21 of the Rent Control Order. The learned

Appellate Authority maintained the permission granted by the learned Rent Controller under Clause 13(3)(vi) but as regards the permission under Clause 13(3)(ii)(v) and (vii) it remanded the proceedings to him for fresh inquiry according to law. The appellant preferred a Writ Petition before this Court registered as Writ Petition No. 2335 of 1991 against the order of the learned Rent Control Authorities granting permission under Clause 13(3)(vi) of the Rent Control Order. The learned Single Judge of this Court by his Judgment dated 24-1-1992 in the above Writ Petition, remanded the matter to the Appellate Authority for fresh inquiry and decision according to law regarding the case of the respondent No. 1 Landlord under clause 13(3)(vi) of the Rent Control Order.

4. After remand, the appellant filed an application before the learned Additional Collector, Amravati exercising the appellate powers under Clause 21 of the Rent Control Order, for filing additional documents, which application was rejected by him. Ultimately, by his order dated 29-8-1992, the learned Additional Collector, Amravati maintained the permission granted by the learned Rent Controller under clause 13(3)(vi) of the Rent Control Order. He, however, remanded the matter to the learned Rent Controller for fresh inquiry according to law regarding the permission claimed under Clause 13(3)(ii)(v) and (vii) of the Rent Control Order.

5. Feeling aggrieved, the appellant preferred a Writ Petition registered as Writ Petition No. 755 of 1993 which came to be dismissed by the learned Single Judge of this Court by his Judgment rendered on 13-4-1992. The appellant has, therefore, challenged the Judgment of the learned Single Judge as well as the learned Appellate Authority by filing the instant L.P.A. in this Court.

6. As hereinbefore referred to, the principal question raised in the instant L.P.A. is whether the Additional Collector can hear the appeal preferred under Clause 21 of the Rent Control Order, when there is no notification issued by the State Government under Clause 21-A(1) of the Rent Control Order empowering him to hear and decide an appeal against the order of the Rent Controller under clause 21 of the said Order. Although this question is raised for the first time in the instant L.P.A., since it raises pure question of law and jurisdiction, we have heard the learned Counsel for the parties at length on this question. It is not in dispute that there was no notification issued by the State Government in exercise of its powers conferred under Clause 21-A(1) of the Rent Control Order empowering the Additional Collector to hear and decide the appeals against the orders of the Rent Controller preferred under Clause 21 of the said Order, until recently when by Notification dated 26-7-1993 issued under the aforesaid Clause 21-A(1) of the said order, the State Government has empowered the Additional Collectors specifically now to hear and decide the appeals under Clause 21 of the Rent Control Order. It is further not in dispute that the only notification which was issued under Clause 21-A(1) of the Rent Control Order and which was in force during the relevant period in the instant case was the notification dated 13-6-1966 investing all the Resident Deputy Collectors with the powers of the

Collector to hear and decide the appeals under Clause 21 of the Rent Control Order.

7. It is, however, urged on behalf of the respondents that there is no necessity for issuing any separate notification for investing the Additional Collectors with the powers of the Collector to hear and decide the appeals under Clause 21 of the Rent Control Order because under the notification dated 22-7-1986 issued by the State Government u/s 13(3) of the Maharashtra Land Revenue Code, 1966 (for short "the M.L.R. Code") the State Government has directed that the Additional Collectors of all the districts shall exercise within their respective jurisdiction all the powers and discharge all the duties and functions of the Collector under the provisions of the said Code and under any law for the time being in force, (emphasis supplied). The submission thus is that since u/s 13(3) of the M.L.R. Code the State Government can and in fact has as per the aforesaid notification dated 22-7-1986 empowered the Additional Collectors to exercise the powers of the Collector under any law for the time being in force, the Additional Collectors can exercise the power of the Collector to hear and decide appeals under Clause 21 of the Rent Control Order. In fact it is further urged on behalf of the respondents that the Additional Collector can even exercise the power conferred upon the Collector under sub-clause (2) of Clause 21-A of the Rent Control Order i.e. the power of the Collector to transfer any appeal to any Officer upon whom the power of the Collector to hear and decide appeals under Clause 21 of the Rent Control Order is conferred as per the Notification issued under Clause 21-A(1) of the said Rent Control Order.

8. On the other hand, the submission on behalf of the appellant is that the Central Provinces and Berar Regulation of Letting of Accommodation Act, 1946 (for short "the Accommodation Act") and the Rent Control Order framed u/s 2 thereof are special enactments as compared to the M.L.R. Code which is a general enactment dealing with the powers, jurisdiction and functions of the Revenue Officers and in general dealing with the Revenue Administration of the State and therefore, the special Provisions made in the former enactment would exclude the application of the general provision in the M.L.R. Code. The submission thus is that since the power conferred upon the State Government under Clause 21-A(1) of the Rent Control Order to invest any Officer with the powers of a Collector under Clause 21 is a special provision, the notification to empower any Officer to exercise the power of the Collector under Clause 21 has to be issued under the said provision, without which no Officer can exercise the power to hear and decide appeals conferred upon the Collector under Clause 21 of the said Order. What is urged is that the above Special provisions under Clause 21-A(1) of the Rent Control Order would prevail over the general provision contained in section 13(3) of the MLR Code and would exclude its application in regard to the conferment of the power of the Collector to hear and decide the appeals under clause 21 of the Rent Control Order upon any Officer including the Additional Collector. The submission thus is that not the general notification u/s 13(3) of the MLR Code, but the notification under Clause 21-A(1) of the Rent

Control Order is necessary to empower the Additional Collectors to hear and decide the appeals in the absence of which they have no jurisdiction to do so.

9. To examine the rival contentions, it is necessary to see that section 2 of the Accommodation Act empowers the Government to issue a Rent Control Order for the purposes given therein. Section 6 and section 7 of the said Act which are material for our purpose are reproduced below :

Section 6. Effect of orders inconsistent with other enactments. - Any order made or deemed to be made u/s 2 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Section 7. Jurisdiction of Civil Courts and Revenue Officers. - No Civil Court, Tribunal or Revenue Officer, other than an officer or authority empowered under an order made or deemed to be made u/s 2 shall have any jurisdiction by way of appeal or revision in respect of any order passed by any authority empowered in that behalf by any such order in respect of any matter specified in section 2.

10. The provisions of section 6 of the Accommodation Act show that the Rent Control Order has an overriding effect over the provisions of any other enactment inconsistent with it except of course the Accommodation Act itself. Similarly, section 7 of the Accommodation Act shows that it is only the Officer or the Authority which is empowered under the Rent Control Order which has jurisdiction to hear appeals or revisions in respect of the orders passed by the Rent Controller upon any matters contained therein.

11. It is in the light of the special provisions of section 7 of the Accommodation Act which require any Officer or authority to be specifically empowered under the Rent Control Order for having jurisdiction to hear and decide the appeals or revisions in respect of the orders passed thereunder that we have to consider the question whether the Additional Collector who is empowered not under clause 21A(1) of the Rent Control Order but under the General Notification dated 22-7-1986 issued under the provisions of section 13(3) of the MLR Code, which is a general enactment regarding the revenue administration of the State, can exercise the powers of the Collector to hear and decide the appeals under clause 21 of the Rent Control Order, particularly when it is clear from section 6 of the Accommodation Act that the Rent Control Order issued u/s 2 of the said Act is given overriding effect over any other enactment which may be inconsistent with the provisions of the said Order.

12. In our view, the principle expressed in the maxim *generalibus specialia derogant*, viz. that if a special provision is made on a certain matter, that matter is excluded from the general provision is clearly attracted in the instant case. The above principle is a well known principle adopted to harmonize the two apparently conflicting provisions. The approach normally is to give the special provision the primacy over the general provision. See :

- a) Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, .
- b) Commissioner of Income Tax, Patiala and Others Vs. Shahzada Nand and Sons and Others, .
- c) State of Gujarat and Another Vs. Patel Ramjibhai Danabhai and Others, .
- d) State of Bihar Vs. Dr. Yogendra Singh Col (Retired) and Others, .
- e) Maharashtra State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, .
- f) Sanwarmal Kejriwal Vs. Vishwa Co-operative Housing Society Ltd. and others, .
- g) Shri Sarwan Singh and Another Vs. Shri Kasturi Lal, .
- h) Ravi Dutt Sharma Vs. Ratan Lal Bhargava, .
- i) Sanwarmal Kejriwal Vs. Vishwa Co-operative Housing Society Ltd. and others, .
- j) Jogendra Lal Saha Vs. The State of Bihar and others, .

13. As already pointed out, in view of section 7 of the Accommodation Act, specific empowerment under the Rent Control Order is necessary to an Officer or Authority to hear appeals and revisions arising out of the orders passed under the said Order, which would mean that for hearing an appeal against the order of the Rent Controller, under clause 21 of the Rent Control Order, the Officer or the Authority other than the Collector must be expressly empowered by Notification issued by the State Government under Clause 21A(1) of the said Order. The general provision contained in section 13(3) of the MLR Code empowering the State Government to confer powers of the Collector upon any Revenue Officer under any law for the time being in force must therefore be deemed to exclude the power of the Collector to hear and decide the appeals under Clause 21 of the Rent Control Order. The Notification issued by the State Government dated 22-7-1986 u/s 13(3) of the MLR Code empowering the Additional Collectors of all the Districts to exercise under their respective jurisdiction all the powers and discharge all the duties and functions of the Collector under the provisions of the MLR Code as well as under the provisions of any other law for the time being in force cannot confer any power upon the Additional Collector to hear and decide the appeals under Clause 21 of the Rent Control Order.

14. It is thus clear that in the absence of the Notification under clause 21A(1) of the Rent Control Order, which is the requirement of the substantive provision of section 7 of the Accommodation Act, the Additional Collector has no jurisdiction to hear and decide the appeals under Clause 21 of the Rent Control Order. The general notification issued by the State Government u/s 13(3) of the M.L.R. Code cannot, therefore, be successfully pressed into service to show that since the powers on the Collector are conferred under the notification dated 22-7-1986 upon the Additional Collectors, the Additional Collectors can exercise the powers of the Collector to hear and decide appeals under Clause 21 of the Rent Control

Order.

15. It is then urged on behalf of the respondents that the Additional Collector is himself a Collector functionally and therefore he can exercise the power of the Collector under Clause 21 of the Rent Control Order directly without any notification in that regard under Clause 21-A(1) of the said Order. The above submission is fallacious as it is again based upon the aforesaid notification dated 22-7-1986 because the State Government has directed by the said notification that the Additional Collectors can exercise the powers and can discharge the duties and functions of the Collector under the M.L.R. Code or under any law for the time being in force.

16. In considering the said contention, it is first necessary to see that the expression "Collector" is not defined in the Accommodation Act as also the Rent Control Order. The Expression "Collector", is however, defined in section 2(11) of the Bombay General Clauses Act, 1904 according to which it means the Chief Officer incharge of the revenue administration of the district. We may at this stage point out that the definition of the expression "Collector" was the same in the erstwhile C P. and Berar General Clauses Act, 1914 which was at the time of the enactment of the aforesaid Accommodation Act and the Rent Control Order framed thereunder was applicable in the Vidarbha Region. Turning to the provisions of the M.L.R. Code, it may be seen that although the expression "Collector" is not as such defined therein, section 7(1) of the said Act empowers the State Government to appoint the Collector for a district to be the incharge of the revenue administration thereof. In the absence of any guidelines in the accommodation Act and the Rent Control Order framed thereunder, in our view the expression "Collector" in the Rent Control Order has to be understood in the above sense.

17. If the expression "Collector" is understood in the Rent Control Order in the above sense, it would mean that there is only one Collector for each district incharge of its revenue administration which is what is envisaged when the power is conferred upon him under the Rent Control Order. Clause 21 of the Rent Control Order which confers appellate power upon the Collector therefore, envisages only one person upon whom the power to hear the appeals is conferred i.e. the Chief Officer incharge of the revenue administration of the district. We, however, make it clear that the conferment of such power upon the Collector is not as a persona designata but it is by his office which would mean that whosoever is appointed as a Collector of the District or is delegated his power in accordance with law is entitled to exercise the power under clause 21 of the Rent Control Order.

18. Once it is held that the expression "Collector" under Clause 21 of the Rent Control Order means only a person who is appointed as such i.e. the Chief Officer incharge of revenue administration of the district u/s 7(1) of the M.L.R. Code, it would follow that for any other person or Officer to exercise the power under Clause 21 of the Rent Control Order there must be a specific empowerment as

required by Clause 21A(1) of the said Order, which expressly provides that for investing any officer, which would mean an Officer other than the Collector, the State Government has to issue a notification under the said Clause to enable him to exercise the powers of the Collector under Clause 21.

19. It may be seen that even for functional equivalence, with the Collector, an appropriate notification to empower the Officers concerned, viz. Additional Collectors in the instant case, is necessary to enable them to exercise his powers and discharge his duties and functions. In the absence of such a Notification, the Additional Collector cannot be equated to the Collector. In *Gulabrao Bablaji Ujjainkar and Others Vs. State of Maharashtra and Others*, , where this question was considered in the context of the question whether the Additional Commissioners have the status of the Commissioner, it was observed that by virtue of the aforesaid Notification dated 22-7-1986, issued u/s 13(3) of the M.L.R. Code, although there was functional equivalence, so far as the Additional Commissioners and the Commissioner were concerned, for certain administrative purposes or purposes of transfer etc. the Additional Commissioner was subordinate to the Commissioner. As regards the Additional Collector, it is made clear by the Government by its Circular dated 26-6-1992 that the Additional Collector is subordinate to the Collector and that he is required to discharge his duties and functions under his control and supervision.

20. However, the functional equivalence sought to be brought out by the Notification u/s 13(3) of the M.L.R. Code cannot be pressed into service, because the same has to be brought out so far as the Rent Control Order is concerned by the issuance of a Notification under Clause 21 A(1) of the Rent Control Order, for the purposes of exercise of the powers of the Collector under clause 21 thereof. It is only then as is clear from Clause 21A(2), which makes the decision of such Officers as effective as that of the Collector, that the functional equivalence can be said to have been brought between the Additional Collector and the Collector so far as the powers of the Collector under Clause 21 of the Rent Control Order are concerned.

21. In this view of the matter, the contention raised on behalf of the appellant has to be upheld and it has to be held that during the relevant period the Additional Collectors had no jurisdiction to hear and decide the appeals under clause 21 of the Rent Control Order, in the absence of a Notification under Clause 21A(1) of the said Order empowering them to do so.

22. However, this is not the end of the matter. The most important question which needs consideration is whether the order passed by the Additional Collector in the appeal, decided by him on 29-8-1992, needs to be set aside on the ground that he was not then empowered to hear the appeal against the order of the Rent Controller by issuance of a Notification under clause 21A(1) of the Rent Control Order for the said purpose. Herein comes the question of the application of the de facto doctrine. The de facto doctrine is now well established by several decisions of the Supreme Court. The said doctrine is that the acts of

the Officers de facto performed by them within the scope of their assumed official authority, in the interest of the public or third persons and not for their own benefit, are generally as valid and binding, as if they were the acts of officers de jure. A Judge, de facto is one who is not a mere intruder or usurper but one who holds office, under colour of lawful authority, though his appointment is defective and may later be found to be defective. Whatever be the defect of his title to the office, Judgments pronounced by him and acts done by him when he was clothed with the powers and functions of the office, albeit unlawfully, have the same efficacy as Judgments pronounced and acts done by a Judge de jure. Such is the de facto doctrine, born of necessity and public policy to prevent needless confusion and endless mischief.

23. Another rule based upon public policy having bearing on the question of de facto doctrine is that the defective appointment of a de facto Judge may be questioned directly in a proceeding to which he be a party but it cannot be permitted to be questioned in a litigation between two private litigants, a litigation which is of no concern or consequence to the Judge except as a Judge. Two litigants litigating their private titles cannot be permitted to bring in issue and litigate upon the title of a Judge to his office. Otherwise as soon as a Judge pronounces a Judgment a litigation may be commenced for a declaration that the Judgment is void because the Judge is no Judge. A Judge's title to his office cannot be brought into jeopardy in that fashion. Hence the rule against collateral attack on validity of judicial appointments. To question a Judge's appointment in an appeal against his Judgment is, needless to say, such a collateral attack.

24. The above view is taken by the Supreme Court in the case of Gokaraju Rangaraju Vs. State of Andhra Pradesh, . The facts in the said case show that the Supreme Court had held that the appointment of the Additional Sessions Judge in Andhra Pradesh, who heard the criminal appeal in that case was invalid and, therefore, the question arose in the said case whether his Judgment was without jurisdiction. The High Court as well as the Supreme Court held in the said case that the said Additional Sessions Judge was not an intruder or usurper but one who held office, under colour of lawful authority. They further held that the de facto doctrine was applicable and his acts and Judgments were saved.

25. Following the above Judgment in Gokdraju Rangaraju's case, the Supreme Court has applied the de facto doctrine in the case of Beopar Sahayak (P) Ltd. and Others Vs. Vishwa Nath and Others, . The said case, like our present case, arose under the provisions of the U.P Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972. It was found that the First Class Magistrate who was appointed as a Prescribed Authority u/s 3(e) of the said Act did not possess the requisite experience. However, it appears from para 12 of the said Judgment that there was a general notification empowering Additional City Magistrate II, Kanpur, as a Prescribed Authority under the said Act and the person whose Judgment was impugned was transferred and posted in the said post. Although on facts in the said case it was held that the said Prescribed Authority satisfied,

the requirement about the experience laid down in section 3(d) of the said Act, even otherwise assuming that he did not have the requisite experience, it was held in the said case that the validity of the order passed by him could not have been impugned because of the application of the de facto doctrine.

26. Turning to the facts in the instant case the Additional Collector who has heard the appeal under Clause 21 of the Rent Control Order cannot be said to be an intruder or usurper but is a person who has heard the appeal under the colour of lawful authority, because as is clear from the notification dated 22-7-1986 u/s 13(3) of the M.L.R. Code, he was conferred with the powers of the Collector and was empowered to discharge his duties and functions under any law for the time being in force which would have normally included the Accommodation Act and the Rent Control Order framed thereunder but did not because of the specific provision contained in section 7 of the aforesaid Act read with clause 21-A(1) of the aforesaid Order issued thereunder which as shown above, required specific empowerment thereunder of any officer by the State Government for exercise of the power of the Collector under clause 21 of the said Order. The impugned order which is passed by the learned Additional Collector on 29-8-1992, therefore, cannot be set aside but has to be saved by application of the de facto doctrine.

27. The learned Counsel for the appellant has then tried to challenge the order of the learned Single Judge on merits. It is pertinent to see that the permission granted by the learned Rent Controller under Clause 13(3)(vi) of the Rent Control Order is affirmed in appeal by the learned Additional Collector. The learned Single Judge has also affirmed their orders. There is thus a concurrent finding of fact against the appellant regarding the permission granted under clause 13(3)(vi) of the Rent Control Order. Apart from this, the learned Single Judge has thoroughly considered the submissions made by the appellant before him and has thereafter rejected the same. No interference is, therefore, called for in the order passed on merits by the learned Single Judge.

28. The instant L.P.A. thus fails and is dismissed. However, there would be no order as to costs in this L.P.A.