
(1979) 07 BOM CK 0032

In the Bombay High Court

Case No : Misc. Petition No. 320 of 1971

Martin and Harris and Others

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 11-07-1979

Acts Referred:

Bombay Land Requisition Act, 1948 — Section 4(3), 6(4)

Citation : (1979) 07 BOM CK 0032

Hon'ble Judges : P.B. Sawant, J

Bench : Single Bench

Advocate : M.S. Sanghvi, for the Appellant; S.B. Sukhtankar, for respondent No. 1, R.J. Joshi and T.R. Subramaniam, for the Respondent

Judgement

P.B. Sawant, J.—Originally this petition was filed by three petitioner. It appears that on a subsequent date the second petitioners got themselves transposed as second respondents. As the petition stands to-day, the petition is being prosecuted by the two petitioners, namely, the original first and third petitioners and not the second respondents. However, the second respondents support the petitioners to the extent of their interests.

2. The petition has been filed to challenge two orders of requisition, both dated 21st May, 1971, passed by the first respondent State Government u/s 6(4)(a) of the Bombay Land Requisition Act, 1948 (hereinafter referred to as the said Act). The first petitioners are a Private Limited Company. In the year 1942, the first petitioners took on lease from the landlords, who are respondents Nos. 3 to 8 being trustees of Sir Ratan Tata Trust, the whole of the east wing consisting of ground and three floors and first floor of west wing of a building known as Savoy Chambers, situated at Wallace Street, Fort, Bombay. By a notice dated 2nd August, 1965, the landlords terminated contractual tenancy of the first petitioners, and according to the petitioners, they are continuing as statutory tenants thereof since that date. Subsequently, by an agreement of leave and licence dated 12th November, 1968, the first petitioners allowed the second

respondent (the former second petitioners) to use and occupy an area of about 3350 sq.ft. out of the total area of 3500 sq.ft. on the second floor of the said east wing. By another agreement of leave and licence dated 11th May, 1970, the first petitioners gave on leave and licence an area of 2031 sq.ft. out of the total area of 3246 sq. ft. on the third floor of the said east wing to the third petitioners (who are now the second petitioners).

3. Assistance Controller of Accommodation by his notice dated 23rd July, 1970 issued under the said Act and served upon the first petitioners, the second petitioners and the second respondents called upon them to show cause as to why the premises in question, namely, the said second floor and the third floor premises should not be requisitioned by the Government, and fixed an enquiry into the matter on the 31st July, 1970. It appears that in pursuance of this notice, an enquiry was held ultimately on 24th August, 1970, where the petitioners and the second respondents were represented by their legal advisers, and the said Assistance Controller of Accommodation by his letter dated 30th September, 1970, addressed to the first petitioners, intimated his conclusion to them, namely, that on the evidence made available before the Controller of Accommodation, he had come to the conclusion that there was a suppressed vacancy in the premises. The premises were mentioned as "entire second floor and portion of the third floor (about 2000 sq.ft.)." It appears that thereafter there was a representation made by the petitioners and the second respondents to Chief Secretary of the first respondent-State on the 10th of November, 1970 where the Controller of Accommodation was also present. Nothing, however, of any avail to the petitioners came out of the said representation, since by his letter dated 30th December, 1970, the Controller of Accommodation informed the legal adviser of the petitioners and the second respondents that there was no alternation in the decision that it was case of suppressed vacancy as intimated earlier. Thereafter followed the two impugned orders of the requisition both dated 21st May, 1971, one relating to "premises on second floor" and another to "premises on the third floor". The first was addressed to the landlords, the first petitioner and the second respondents whereas the second was addressed to the landlord, the first petitioners and the original third petitioners and now the second petitioners. A statement has been made at the bar that during the pendency of the petition the original third petitioners, i.e. the second petitioners vacated the premises and the first petitioners alone have been in occupation of the third floor which is the subject-matter of the said second requisition order. The petition has been filed to challenge both the said requisition order and as stated earlier, the petition was originally filed by the first petitioners as well as the two licensees, namely the present second respondents and the present second petitioners.

4. The impugned order have been attacked on three different grounds. The first ground of attack is that the said premises within the meaning of the said Act and, therefore, could not be the subject-matter of the requisition under the said Act; the second ground of attack is that the petitioners have not either parted

with their rights or interests in the said premises or cased to occupy the same and hence there could not be any declaration of vacancy as far as the said premises are concerned, and last ground of attack is that in any case the impugned order are invalid and inoperative in law, inasmuch as, there is no application of mind and the decision to declare the suppressed vacancy in respect of the said premises has been arrived at arbitrarily and without any material on record.

5. As far as the first contention is concerned, the argument advanced by Mr. Sanghvi the learned Counsel for the petitioners proceeded on the interpretation of the definition of "premises" given in sub-section (3) of section 4. The relevant part of the said definition is as follows :---

"Section 4(3) "premises" means any building or part of a building let or intended to let separately including-

(i)x x x x x x x

(ii)x x x x x x x

Mr. Sanghvi contended that for premises to be requisitioned under the Act, it must be shown that the said premises were other let or intended to be let separately. In the present case, according to him, admittedly the landlords let to the first petitioners the entire east wing and the first floor of west wing together under one lease and one agreement, right from the years 1942. Neither the second floor nor part of the third floor in the east wing were ever let by the landlords separately no were they indented to be let so separately. In the circumstances, the requisition order, inasmuch as they purport to requisition the second floor and the part of the third floor separately, are without jurisdiction and, therefore, void. For this proposition he relied upon two decision, one of this Court reported in 52 BomLR. 627 State of Bombay v. Virendra Motsbhoy, another of the Supreme Court reported in 68 BomLR 781 Mongibai Hariram v. The State of Maharashtra. I am afraid that both these decision are inapplicable to be proposition which Mr. Sanghvi has sought to canvass. In 52 BomLR 627, the facts where that the petitioners were owners of a house which consisted of several residential flats, one of which was let to one Mrs. Coultrup. On 31st October, 1947, the petitioners gave a notice to Mrs. Coultrup terminating her tenancy on December 31, 1947 and Mrs. Coultrup claimed protection under Bombay Act VII of 1944, and elected to hold over as a statutory tenant on and after January 1,1948. In January 1949, Mr. Coultrup ceased to occupy the flat and handed it over to one Mahatani. On January 8, 1949, the petitioners wrote to the Secretary of the then Government of Bombay, Health and Local Government Department, requesting that the possession of the flat should be handed over to petitioner No. 2 as he was the first informant of its vacancy. On the same day the petitioner received a letter from the Assistant Controller of Accommodation that the Government had permitted Mrs. Coultrup to exchange her flat in Karachi. The petitioner were requested to accept the latter as their direct tenant. The

petitioners were not disposed to do this and, therefore, they wrote in reply that the flat was required by them for their own use occupation and that they were not prepared to accept Mahatani as their direct tenant. On October 10, 1949, the petitioners filed a petition in the High Court alleging that they had no intention to let the flat on January 15, 1949, when it became vacant by reason of Mrs. Coultrup ceasing to occupy the same. In the alternative, they submitted that no order u/s 6(4) of the said Act having been made by the State of Bombay within a period of one month from the date on which intimation of the vacancy of the flat was received, the respondents had no jurisdiction to make an order requiring the petitioners to let the flat to Mahatani. It is on these facts and dealing with the question as to whether the flat in question was premises within the meaning of the aforesaid definition, that this Court observed that the word "intended" must import a volition on the part of the landlord. That volition cannot be a fluctuating or an ambulatory volition. If a volition is once expressed by the owner of the landlord quay building than that volition becomes and incident attaching the building itself, and it is not open than to the landlord by changing his intention from time to time to say that the particular building was not intended to be let. Therefore, the expression "intended to be let" is a characteristic or an incident of the building. In order to determine whether a building is intended to be let when it falls vacant, it is immaterial what the intention of the landlord was at the moment. What is material is whether the incident, viz. "intended to be let", is attached to the building at the time when the vacancy takes place, and whether a building is intended to be let or not is a question of fact to be determined by the circumstances of the case and the evidence on record. The Court, therefore, held in that case that the flat not only was intended to be let out but was actually let to a tenant, and, therefore, when the vacancy occurred it could be postulated of the flat that it was a flat which was intended to be let. While holding thus, this Court did not accept the argument advanced by the Advocate General that "intended to be let" meant capable of being let and the Court held that it was not possible to accept that any building or part of the building which could be let out to a tenant would be a building intended to be let. Mr. Sanghvi relied on these observations which were made by the Court while dealing with the said argument with the learned Advocate General, and contended that notwithstanding the fact that a building or a part of the building was once let or even intended to be let, if a part of the building is requisitioned, it must be shown that the said part of the building was either let or intended to be let separately. Unless this was done, the part of the building, according to him, could not be requisitioned. In other words, his contention was that before a particular portion of the building is requisitioned, it must be shown that portion was ever separately let or was intended to be let. For example in the present case, according to Mr. Sanghvi, it must be shown that the second floor or part of the third floor, which is requisitioned should be shown to have been separately let or intended to be let. Since there is no material on record to show it, the same could not be requisitioned. There is nothing in the said observations of this Court to warrant such conclusion. The argument advanced by Mr. Sanghvi on

that footing, therefore, has only to be stated to be rejected.

6. As regards the Supreme Court decision which is the second authority relied upon by Mr. Sanghvi, here again the facts were that one P.S. Nambiar was a tenant of a room on the second floor of a building. He left the premises without informing the owners and after putting K.A. Nambiar in possession of the said room. This was in 1956. In 1958, the owners sued P.S. Nambiar as well as K.A. Nambiar for evicting them from the said room, in the Court of Small Causes, Bombay on the ground that P.S. Nambiar had sub-let the said premises, that he had been in arrears of rent and that the premises were required bona fide for their own use and occupation. The suit was decreed ex parte on 5th August, 1958, and the decree-holder got possession of the room on 30th April, 1959. On 1st May, 1959, K.A. Nambiar applied to the Controller of Accommodation for requisitioning the said room and for letting it to him as he had been evicted therefrom on 30th April, 1959. On July 11, 1959, the Accommodation Officer issued a notice to the owners to show cause why the room should not be requisitioned. The owners showed cause and thereafter by his letter dated the 17th August, 1959, the Accommodation Officer informed the owners that he had come to the conclusion that it was a case of suppressed vacancy. Against this order, the owners appealed to the Government of Bombay and the Government by its requisition order dated 10th September, 1959, requisitioned the said room. On September 12, the room was allotted to K.A. Nambiar. On September 30, the owners filed a petition in the High Court under Article 226 of the Constitution. The learned Single Judge dismissed the petition of the owners. In appeal the decision of the Single Judge was confirmed and hence the owners preferred an appeal to the Supreme Court. Here again, the contention based on the definition of "premises" was that the expression "let or intended to be let separately" governed both "building" and "part of a building". This contention was negative and the Court held that the said expression governed only the phrase "part of a building". The Court held that "intended to be let separately", could not have any reasonable meaning with reference to a building since there was no question of the building being intended to be let separately. Either the building is to be let or not to be let. The phrase, "let or intended to be let separately" could apply only to the letting of a part of a building as a landlord of a building was not forced to let a part of the building when he was in occupation of it. It, therefore, followed that all buildings, irrespective of the fact whether they let or intended to be let at the time the Act came into force came within the expression "premises" and, therefore, could be requisitioned by the Government where the requirements of sections 5 and 6 were satisfied. If the buildings came under the control of the Government from the date of the enforcement of the Act, there was no reason why part of a building which was let or which was intended to be let separately on such a date should not, thereafter, come under the control of the Government for the purposes of the Act. The intention to let was not to be determined every time a part of the building was vacant. The Court, therefore, held negating the contention of the owners that the room in question was

premises within the meaning of the said Act, notwithstanding the fact that the owners wanted the said room for their own use and occupation and not for letting it on the date it fell vacant. The aforesaid facts and decision of the Court in that case will also show that once the premises are let, the said premises would come within the definition of "premises" under the said Act. There is nothing in the said decision to support Mr. Sanghvi's contention that the word "premises" in the said Act must mean those premises which should have been let or intended to be let separately and they cannot be part of the premises which were either let or intended to be let separately.

7. The second part Mr. Sanghvi's submission on this point was that in any case there is nothing on record to show that at any time the parts of the leased out premises, namely, the east wing and the first floor of the west wing of the said building were ever let out separately. Assuming that even a part of the said premises would come within the definition of "premises" under the Act, it must be shown that such part of the premises and its particular premises covered by the impugned orders could be let out or were intended originally by the landlords to be let out separately. On the other hand, this contention was that the landlord by one rent note had let out the entire said premises to the first petitioners. They could be let and were intended to be let only together and not in parts. Admittedly, the premises that were let out to the first petitioners consisted of the ground and three floors of the east wing of the first floor of the west wing of the said building. Even the description of the said leased out premises would show that the premises do not adjoin each other so as to form one compact block although they are in same building. The said portions of the building cannot normally form part of a composite tenement and it is not seriously urged by Mr. Sanghvi that the said premises could be said to be a part of a composite tenement. Therefore, merely because the tenant chooses to take for his own purposes and convenience different portions of a building under one lease deed or rent note, it is not possible to hold that such different portion or parts of the building constitute one tenement. For these reasons, it is not possible to accept the contention that merely because original tenant chose to take three different parts of a building under one lease deed, the said different parts were not intended to be let separately by the landlords. It is for this reason that I find it difficult to accept Mr. Sanghvi's contention that the second floor and a part of the third floor which are the subject-matter of the requisition in the present case, were not intended to be let separately by the landlords merely because they were let out under one rent note to the first petitioners. I am, therefore, of the view that notwithstanding the fact that the second floor and part of the third floor are parts of the premises originally let out to the first petitioners, they will still be covered by the definition of "premises" within the meaning of the said Act.

8. As regards the submission, namely, that these parts were not capable of being let separately, Mr. Sanghvi has fairly conceded that there is no material placed by the petitioners on record to show that the second floor and the part of the third

floor under requisition were so constructed or were so situated that they could not be let out separately or that they were not intended to be let out separately. It must be remembered in this connection that except for a bare allegation of the petitioners, there is nothing on record to support the said contention. It must further be noted that the landlords have not filed any affidavit to show that the premises in question were not intended to be let out separately.

9. For all these reasons, therefore, I find that there is no substance in the first contention, namely, that the second floor and the part of the third floor under requisition were not covered by the definition "premises" contained in sub-section (3) of section 4 of the said Act.

10. As regards the second submission, it is true that the leave and licence agreements entered into by the petitioners with the second respondents and second petitioners have recited in terms that the contractual tenancy of the petitioner had been terminated and that the petitioners were only the statutory tenants of the premises. Hence, when the petitioners entered into the said leave and licence agreement, as the law stood then and stands even now, it cannot be said that the petitioners had any right, title or interest in the premises which they could assign by way of sub-lease, in favour of the second respondents and the second petitioners. However, that did not prevent them from ceasing to occupy the premises and allowing the second petitioners and respondents from occupying the same. The provisions of section 6 come into operation, not only when the tenant assigns or transfers his rights or interests in the premises, but also when he ceases to be in occupation of the same for other reasons. It will be convenient here to quote Explanation (a) to section 6 in this behalf :---

"Explanation.---For the purpose of the purpose 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."

If is, therefore, clear from the aforesaid explanation the although the occupants may not assign or transfer his title or interest in the premises in question, he may cease to be in occupation of the same and the moment he ceases to be in such occupation, the authorities get a right to declare the premises vacant. The question, therefore, to be answered in the present case is whether notwithstanding the fact that the first petitioners were merely the statutory tenants, it can be said in the circumstances of the case that they had ceased to occupy the premises, namely, the second floor and a part of the third floor. The Accommodation Officer who has filed the affidavit-in-reply to the petition has stated that in coming to the conclusion that the first petitioners were not in use

or occupation of the second floor and a part of the third floor, reliance was placed on the two agreements of leave and licence which the first petitioners has entered into with the second respondents and the second petitioners. As regards the agreement entered into with the second respondents, the agreement recited that the second respondents had approached the first petitioners with a request to allow them to use and occupy about 3350 square feet of the area from the second floor. On the first petitioners' own showing, the second floor consisted of 3500 square feet. The petitioners were charging Rs. 4,000/- per month as a licence fee and had received Rs. 76,000/- being the compensation for 19 months in advance in addition to the sum of Rs. 24,000/- as deposit. The leave and licence agreement was to be renewed every 11 months for the next 110 months. These conditions contained in the leave and licence agreement together with the statements of the representative's of the parties were taken into consideration and it was concluded that the first petitioners had parted with not only 3350 sq.ft. but also with the rest of the area on the second floor and the authority had come to the conclusion that the first petitioners had ceased to occupy the entire of the second floor.

11. As regards the part of the third floor, which is the subject-matter of the second requisition order, it has been pointed out in the affidavit-in-reply, that similarly the leave and licence agreement dated 11th May, 1970, entered into by the first petitioners with the second petitioners was taken into consideration. The said agreement mentioned that about 2031 sq.ft. of the area on the third floor which consists of 3246 sq.ft. was admittedly handed over by the first petitioners to the second petitioners. The first petitioners charged the second petitioners Rs. 3,858.90 as the monthly compensation, had received from them a deposit of Rs. 23,153.40 and promised to renew the leave and licence agreement for a total period of not less than 110 months. These recitals in the agreement together with the statements of the representative of the first petitioners and of the second petitioners were looked into and a conclusion was arrived at that the first petitioners had ceased to be in occupation of a portion of the third floor premises. In the circumstances, it could not be said that the authorities had committed any error in their conclusion that the first petitioners ceased to occupy the premises under requisition. Mr. Sanghvi then pointed out the different language used in the different documents issued from time to time by the first respondent. It is pointed out in this behalf that in the show cause notice dated 23rd July, 1970, the premises mentioned were "second floor and third floor". In the declaration dated 30th September, 1970, the premises mentioned were "second floor and portion of third floor" (about 2000 sq.ft.). In the letter dated 30th December, 1970, what was mentioned was "the entire second floor and portion of third floor" and in the impugned order the description of the premises was "premises on second floor and premises on third floor". Mr. Sanghvi, in the first instance, contended that besides the leave and licence agreements, there was nothing on record to come to the conclusion that the whole of the second floor was handed over to the second respondents and that the petitioners had

ceased to be in occupation even of the portion retained by them under the said agreement. The first respondent had not disclosed whether there was any other material on the basis of which this conclusion was arrived at. In as much as there was no material to come to the conclusion that the first petitioners had parted with the entire second floor, the conclusion in that respect was vitiated in law. As regards this submission, the first respondents through the affidavit-in-reply filed by the Accommodation Officer have started that in coming to the conclusion that the entire second floor had ceased to be in occupation of the first petitioners, they had taken into consideration not only the leave and licence agreement, but also the statements made by the representatives of the first petitioners and the second petitioners. Taking into consideration the fact that the total area was 3500 sq.ft. and the portion alleged to have been retained by them was only 150 sq.ft. the said retention, according to them was only a sham one and was not intended to be acted upon. It has also been mentioned there by the Accommodation Officer that he was informed by the landlords that they had proceeded against the first petitioners in the proper Court for recovery of possession of the said premises. It must further be remembered in this connection that it has throughout been contended by the first petitioners both before the authorities and in this Court that inspite of the said agreement they were jointly in possession of the entire second floor and the agreement of leave and licence was made for advancing the first petitioner's business. It is for the first time in arguments in this Court that it is sought to be contended that the first petitioners had retained the possession of 150 sq.ft. and, therefore, the whole of second floor could not be requisitioned. The authorities found that the theory of joint possession of the entire second floor was unbelievable, and there was nothing in common between the business carried on by the first petitioners and that of the second respondents. It is also further not known as to why, in the face of the recital in the agreement that the tenancy was terminated, the first petitioners even in the memo of petition have badly stated that their tenancy was never terminated. In the circumstances, it cannot be said that the conclusion to which the authorities had come, namely, that the first petitioners had parted with the entire of the second floor and not merely 3350 sq.ft. area, could be said to be either unreasonable or without any material on record. I am, therefore, of the view that the decision arrived at by the authorities on the said point is not liable to be challenged in this Court, merely because the leave and licence agreement mentioned only 3350 sq.ft. out of 3500 sq.ft. As has been stated in the affidavit-in-reply, it is not merely the leave and licence agreement but also the enquires made with the representatives of the petitioners and the second respondents which were taken into consideration by the authorities while coming to the said conclusion.

12. As regards the discrepancy with regards to the description of the premises on the second floor occurring in different documents, I am of the view that the discrepancy is not such, as to invalidate the impugned order. The show cause notice correctly mentions second floor, the declaration of vacancy date 30th July,

1970 also mentions the entire second floor and the impugned order also in terms mentions "premises on second floor." Read in its proper context, the impugned order seeks to requisition the entire of the second floor. I am. Therefore, of the view that what was sought to be requisitioned and was ultimately requisitioned were the entire premises on the second floor. The first petitioners and the second respondents also cannot be said so have been misled on that account in any manner.

13. As regard the discrepancy in the description of the third floor premises, the Accommodation Officer in his affidavit has stated that what was sought to be requisitioned from the very beginning was a portion of the third floor which was the subject-matter of the leave and licence agreement in favour of the second petitioners. However, it appears that the show cause notice dated the 23rd July, 1970, did not specify that the notice was with respect only to a portion of the third floor. On the other hand, it described the said premises as "third floor premises". However, the declaration which was made on 30th July, 1970, did mention specifically the said premises as "portion of the third floor (about 2000 sq.ft.)." It was possible for the officer who had the leave and licence agreement before him and which had mentioned the area, namely, 2031 sq.ft. as having been handed over to the licensees, to state the said exact area in the declaration. The next letter dated 30th December, 1970 reproduces the same description of the third floor premises as is given in the declaration dated 30th July, 1970. The impugned order dated 21st May, 1971, however, does not refer to any area on the third floor or even state that only a portion of the third floor was requisitioned. It merely mentions "premises on the third floor." The authorities concerned could have certainly been more precise in the respect. However, as pointed out by Mr. Sukhtankar, the order has to be read in the light of the declaration of the vacancy and also in the light of the further letter dated 30th December, 1970 which reproduces precisely what was stated in the declaration of vacancy. The order could not travel beyond the declaration of vacancy. It is not the case of the Government that they thereby wanted to requisition the whole of the premises on the third floor. That has been made clear in the affidavit-in-reply as well. Furthermore, the order has been endorsed to the occupants, namely, the second petitioners. Mr. Sukhtankar stated that although the agreement mentioned 2031 sq.ft. the precise area was to be determined by measurements on the spot to be carried out at the time of taking possession of the premises, and the authorities did not want to take possession of the area not in the occupation of the second petitioners. The second petitioners as well as the first petitioners knew from the beginning that the area of the premises under requisition was that which was handed over by the first petitioners to the second petitioners. No prejudice has been caused to either of the petitioners merely because the precise area was not stated in the impugned order of requisition.

14. It is not their case that they had not understood the exact purport of the said order or that they were in any way misled, merely because the said order referred to "premises on the third floor" and not to the exact portion of the third

floor. I, therefore, find that there is not much of a substance in the in the grievance made in the behalf. Merely, because the impugned order did not specify the exact area which was requisitioned, the order was not bad in law. As stated earlier, the impugned order has to be read along with the declaration of vacancy and the subsequent letter dated 30th December, 1970. Thus read, there is neither ambiguity nor vagueness in the same.

15. The last contention was that the order was passed without any material on record and without applying mind. As has been already pointed out while discussing the question of vacancy and the question whether the first petitioners had ceased to occupy the premises, the officer concerned, did have before him the leave and licence agreement and the information elicited from the representation of the first petitioners, the second petitioners and the second respondents in the enquiry held by him. It is on the basis of the documents of leave and licence and what transpired in the said enquiry that the officer had come to the conclusion that the first petitioners had ceased to be in occupation of the entire second floor and a portion of the third floor admeasuring about 2000 sq.ft. It has only been explained in the affidavit-in-reply that the landlords of the premises had informed that proceedings were started against the first petitioners for eviction from the second premises on the ground that the first petitioners had sub-let the premises. It is admitted on behalf of the first petitioners as that such proceedings were started by the landlords against the first petitioners. Therefore, all this material was before the officer concerned to come to the conclusion that the first petitioners has ceased to be in occupation of the entire second floor and a portion of the third floor. In the circumstances, it is difficult to accept the contention that there was either no material before the officer concerned or that the decision with regard to the vacancy was arrived at without application of mind to the material on record. This contention also, therefore, must fail.

16. The result is that the petition fails and the rules is discharged with costs.

17. Mr. Sukhtankar for respondent No. 1 stated that the first respondent will not execute both the impugned orders for a period of eight weeks from today.