

(1996) 08 BOM CK 0018
In the Bombay High Court
Case No : Writ Petition No. 89 of 1996

Mrs. Komalam Vardarajan	Vs	APPELLANT
The Union of India and another		RESPONDENT

Date of Decision : 27-08-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 15, 2(1), 4, 5

Citation : AIR 1997 Bom 57 : (1997) 1 BomCR 428 : (1996) 98 BOMLR 550 : (1997) 2 MhLj 632

Hon'ble Judges : S.S. Nijjar, J;N.D. Vyas, J

Bench : Division Bench

Advocate : Mrs. Usha Purohit, for the Appellant; A.J. Rana and A. Rajguru, for the Respondent

Judgement

N. D. Vyas, J.—By the present writ petition under Article 226 of the Constitution of India the Petitioner is challenging the order dated 22nd December, 1995 passed by the 2nd Respondent, under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (the said Eviction Act for short), requiring the petitioner and all other persons who may be in occupation of the premise viz., a flat being Flat No. 6 on the 2nd floor of Patankar Building at Sion. Bombay-400 022 to vacate the same. The petitioner is the widow of one K. Vardarajan (hereinafter referred to as the "the deceased"), who was an employee of the 1st Respondent as Accounts Officer during his lifetime.

2. Briefly stated the facts giving rise to the present petitioner are as follows:--

The deceased who was an employee of the 1st Respondent as mentioned hereinabove, was allotted the said flat on 16th December, 1966 in view of his employment with the 1st Respondent. Since then the deceased with his family continuously resided in the said flat. The said flat was taken on hire by the 1st Respondent in 1942-43. In 1977 the owner of the said building contemplated

conversion of his property into an ownership society and approached other tenants including the deceased with the said proposal. On obtaining permission from the 1st Respondent for purchasing the said flat, the said flat was purchased by the deceased on 19th January, 1979 under a written document. However, few days prior thereto, the deceased had retired from his service on 31st December, 1978. After the deceased purchased the said flat, the deceased addressed a letter on 9th February, 1979 to the 2nd Respondent for rehiring the said flat in view of his having retired and also in view of his having purchased the said flat. In fact by his letter dated 22nd May, 1979, the deceased sent a reminder to his application made earlier. Thereafter on 30th October 1979 the deceased was served with an order passed by the 1st Respondent to the effect that consequent upon his retirement from service with effect from 31st December, 1978, he was not entitled to retain the premises with effect from 1st January, 1979 as the allotment in his favour was deemed to have been cancelled, in any event cancelled by the said order. Therefore, he was asked to hand over vacant possession of the said premises by 15th November, 1979 failing which eviction proceedings were threatened to be instituted against him. The deceased thereupon under cover of his letter dated 4th December, 1979 made an application for rehiring of the said flat in the required form and in the said form the deceased inter alia mentioned that the said premises were let out to the MPO Bombay and Gujarat Circle on monthly tenancy by the previous owner Mr. Patankar and that the said flat was purchased by him from the previous owner who had constructed the said building. The said form further gave the date of purchase as 19th January, 1979. Thereafter a Show Cause Notice dated 8th March, 1980 under the provisions of the said Eviction Act was served upon the deceased pointing out that by the said order dated 30th October, 1979, he was asked to vacate the premises as the allotment order dated 16th December, 1965 in his favour stood cancelled. He was asked to show cause on or before 18th March, 1980 why an eviction order should not be made against him. The deceased by his letter dated 13th March, 1980 replied to the said letter and inter alia stated in the reply that his application for rehiring of the said premises was pending. He requested the Station Commander to consider his case favourably and to release the flat in his favour for self-occupation. Several representations were made by the deceased and also along with other allottees/employees of the 1st Respondent who were similarly placed. Nothing happened for several years and finally on 21st May, 1990 a fresh Show Cause Notice again under the said Eviction Act was issued on the deceased again stating therein that the allotment in his favour stood cancelled as he had retired from service. It was inter alia stated in the said Show Cause Notice that the flat had been hired for serving soldiers and the same was required for allotment to them. It was pointed out in the said Show Cause Notice that the deceased was in an unauthorised occupation of the same and that he should appear personally on 31st May, 1990 before the 2nd Respondent to show cause why he should not be evicted from the said premises. On 31st May, 1990, the deceased again sent a reply to the said Show Cause Notice inter alia stating that he had been in continuous occupation for over

25 years and that he had purchased the said flat : that he had already applied for rehiring of the said flat and that he was giving to understand that out of 6 flats in the said building one had been rehired by the Government and despite this and despite his repeated reminders, his case although being genuine and requiring sympathetic consideration was not considered favourably. On 10th June, 1990 the deceased died. Thus a fresh Show Cause Notice happened to be issued on 14th July, 1990 on the legal heirs of the said deceased and was addressed to the petitioner before us. Earlier facts as contained in the earlier Show Cause Notices were also repeated and it was again pointed out that the flat was meant only for serving soldiers and the same was required for allotment to them. She was asked to show cause by appearing personally on 24th July, 1990. A reply was sent by the petitioner on 25th July, 1990. An order of eviction under the provisions of the said Eviction Act happened to be passed on 27th November, 1990 inter alia stating that she was in unauthorised occupation of Public Premises and that she should vacate the same. An appeal was preferred by the petitioner before the Principal Judge of the Bombay City Civil Court at Bombay and the Principal Judge by his order dated 15th March 1991 remanded the matter to the Estate Officer for consideration of the same afresh as in view of the Principal Judge although it was imperative and mandatory upon the Estate Officer to pass a speaking order indicating the reasons, the same was not done. After the matter was remanded, further detailed representation was filed by the petitioner before the Estate Officer. However, fresh Show Cause Notice was issued on 10th December, 1991 again inter alia recording the facts earlier narrated and inter alia stating that the flat was meant only for serving soldiers and the same was required for allotment to them and ultimately asking the petitioner to show cause. On 30th December, 1991 a reply was sent by the petitioner to the said Show Cause Notice. Again a fresh eviction order dated 29th April, 1992 was passed by the Estate Officer. Again the same being cryptic was challenged before the Principal Judge of the Bombay City Civil Court by way of an appeal and by an order dated 2nd September, 1992, the Principal Judge after recording his displeasure that the earlier order was not followed as required, again remanded the matter to the Estate Officer. The Petitioner thereafter filled a Writ Petition being Writ Petition No. 1907 of 1995 on the Original Side of this Court during the pendency of the fresh hearing before the 2nd Respondent after remand. However, the said petitioner was not entertained but was dismissed with certain directions to the 2nd Respondent. Ultimately on 22nd December, 1995 a detailed order was passed by the 2nd respondent ordering the petitioner to vacate the premises and the same has been challenged before us. We may only mention that the present petition was filed on 10th January, 1996 and was directed to come up for admission on 12th January, 1996. However, apprehending dispossession, an application for urgent hearing for admission was made on 11-1-1996 and the same was entertained. The petitioner was admitted and ad interim relief was granted on that day. But before the Respondent could be served with the order, petitioner was dispossessed on 11th January, 1996 itself. On Petitioner approaching this Court by her Civil Application No. 302 of

1996, the possession was restored to her pending the present petition.

3. Before we deal with the contentions raised by the petitioner before us, it is necessary to refer to certain unreported decisions of this Court cited by Mr. Rana in more or less identical matters. (i) In Appeal No. 61 of 1984 in Writ Petition No. 1271 of 1981 (filed on the Original Side of this Court) a Division Bench of this Court (Pendse and Kotwal, JJ.) (as they then were), by their unreported Judgment dated 1st December, 1987 inter alia held as follows. (1) Purchase of the flat by an allottee of lessor's right cannot extinguish Government's rights as lessee. The only right which the purchaser/allottee acquired is the right to recover possession from the Government by adopting proper proceeding in proper forum. (2) The permission to purchase the rights of the lessor cannot amount to an assurance by the Government that the allottee can retain possession even after retirement. (3) The validity of rehiring policy which required the erstwhile allottee to vacate before his application for de-hiring was considered, was upheld by the Court : (4) it was held that termination of lease or tenancy of the lessee (Government) was not enough to extinguish rights of the Government as lessee and lastly. (5) that even mere institution of an eviction suit by the allottee / purchaser against the Government was not enough to extinguish rights of the Government as lessee and the allottee / purchaser was required to obtain an order of eviction in a properly instituted suit in a competent Court for eviction against the Government.

(ii) The second decision which was cited by Mr. Rana was in Writ Petn. No. 685 / 92 (filed on the Original Side) dated 31st March 1992 delivered Kurdukar, J. (as he then was) and Kapadia, J. The said Division Bench was dealing with another flat situated in Patankar Building itself which is the building in which the premises in question are situated. The said Division Bench inter alia held that (1) the contention that the allottee had become the owner and, therefore, he cannot be evicted cannot be accepted : (2) there was nothing to show that the lease in favour of the Government of the said flat has been terminated : (3) allottee / purchaser despite having purchased the premises cannot challenge the title of the lessee viz., the Government : (4) absence of lease document was not fatal and lastly. (5) the contention of the allottee that when he has become owner cannot be treated as an unauthorised occupant was negated and it was held that on retirement occupancy becomes unauthorised.

(iii) The next unreported Judgment which was cited by Mr. Rana is dated 5th October, 1993 in Writ Petn. No. 611 of 1985 (filed on the Original Side of this Court) delivered by Mrs. Sujata Manohar and Chaudhari, JJ. (as they then were) which also related to the said Patankar Building, wherein. (1) rehiring policy of the Government was discussed and no fault was found with the said policy which requires vacating the premises before the rehiring of the flat is considered by the Government under the said policy : (2) referring to the alleged discrimination in respect of another allottee / purchaser viz., one Mr. Venugopalan, the Division Bench held that any individual departure from a Rule does not create any right in

favour of another person upon similar violation of Rules being committed, and on facts in held that there was no question of any discrimination in respect of the case of Venugopalan inasmuch as Venugopalan had after his purchase of the flat which was earlier allotted to him had in fact vacated the said flat after which only the same was rehired. The final order which was passed gave time to the allottee in the said matter directing the Respondents therein to take sympathetic approach in respect of the consideration of the proposal for rehiring the flat in question, however, conditional upon the allottee therein vacating the premises in question.

(iv) The last decision which was cited by Mr. Rana was an unreported decision in Writ Petn. No. 1633 of 1985 (on the Original Side) dated 11th March, 1994 delivered by Pendse, J. (as he then was) and Patankar, J. It was inter alia held therein that the absence of lease document was not fatal and in fact a regular lease document was not necessary when the lease in question is a monthly lease.

4. Mrs. Purohit, the learned Counsel appearing for the petitioner, submitted that the hiring of premises by the Government was equivalent to requisitioning of the premises and, therefore, parameters of requisitioning of premises must be applied to hired premises. It was her submission that as in the case of requisitioning of the premises, in the case of hiring of the premises also there was an element of compulsion. While making the above submission, Mrs. Purohit relied on the definition of "public premises" given in Section 2(e)(1) of the said Act wherein three types of premises are shown together viz. premises belonging to, or taken on lease or requisitioned by the Government. It was her submission that as premises taken on lease is also shown together with requisitioned premises, the parameters of the requisitioned premises should apply. Therefore, it was her submission that as in the case of hiring also by the Government as a lessee of the premises, the same cannot be for an unreasonably long time. She relied on the decision of the Supreme Court in the case of Grahak Sanstha Manch and others Vs. State of Maharashtra, wherein it was inter alia held that under the provisions of the Bombay Land Requisition Act, 1948 (Requisition Act for short) requisition order although can be issued for a permanent public purpose, cannot be continued indefinitely and that what period should be considered unreasonable would depend upon facts and circumstances of each case. Mr. Rana on the other hand submitted that just because premises taken on lease by the Government is show along with premises requisitioned by Government would not mean that the same parameters as submitted by Mrs. Purohit would apply. Referring to the decision of the Supreme Court in Grahak Sanstha Manch (supra) he submitted that the said decision instead of helping the petitioner, inter alia draws a clear distinction between premises taken under compulsory letting and premises requisitioned. In our opinion, the very basis of Mrs. Purohit's submission is fallacious. Section 2(e)(1) only defines what "Public Premises" means. The Government is entitled to possession of premises as an owner, as a Lessee and as the beneficiary of a Requisition. The said Act provides for a speedy remedy in favour of the Government to obtain possession of any such premises i.

e. premises covered by any of the three categories, when the same is found to be in unauthorised occupation. The relationship of the Government when it is a lessee qua the owner of the premises is that of a tenant and landlord. The landlord who may be the allottee and who happens to have purchased the right, title and interests of the original owner in the premises, cannot, on such acquisition, turn round and say that the lease like a requisition cannot be for an unreasonably long duration. This is precisely the submission of Mrs. Purohit. In our opinion, the relationship of the owner and the Government who is the lessee is governed by the law of the land in respect of landlord-tenant and the purchase by the allottee of the landlord's interest cannot extinguish the leasehold interest of the Government which can be done only by adopting eviction proceedings in a proper forum and obtaining a decree for possession. We may also mention here that the submission of Mrs. Purohit before us is not the same as advanced before the Supreme Court in the case of Grahak Sanstha Manch and others Vs. State of Maharashtra, . The petitioner for whom Mrs. Purohit is appearing is in the same position as the original landlord having purchased the flat and, therefore, the submission that the hiring should be equated with requisition. Similar in effect was the submission before a learned single Judge of this Court in Writ Petn. No. 639 of 1996 filed on the Original Side of this Court which was rightly rejected by our brother A. P. Shah, J. on 18th July, 1996 although in that petition it was in fact established that the entire building was compulsorily hired which is not shown to be the case before us. Even assuming that the entire building was hired compulsorily, the relationship between the owner and the lessee / hirer viz. the Government can be only that of landlord and tenant and governed by the Bombay Rent Act. As is evident from the discussion in the decision of Grahak Sanstha Manch (supra), the provisions of compulsorily letting originally contained in the Requisition Act have been removed by subsequent amendments. Therefore, although Requisition Act as originally enacted, applied to both i. e. compulsory letting and requisition, by deletion of the provisions regarding compulsory letting, the legislature intended that both should not be treated in the same manner. In view of the above discussion, we do not find any substance in this submission of Mrs. Purohit.

5. It was the submission of Mrs. Purohit that in the instant case the deceased expired on 10th June, 1990 as a result thereof the public purpose ceased to exist. However, nothing was done by the Respondents till they gave the Show Cause Notice dated 10th December, 1991 which culminated in the impugned order. Thus according to her, when the Show Cause Notice in question was given, the Respondents sought to revive the public purpose which cannot be permitted to be done. This submission is stated to be rejected. The logical corollary, if this submission is accepted, would be that when for any reason the Government does not initiate any action for eviction the unauthorised occupant can claim to remain in possession as long as he wants. In our opinion the Eviction Act has nothing to do with the public purpose as such. The premises which either belong to the Government or which are taken on lease or which are requisitioned when

required back by the Government can be recovered without any impediment. Moreover, provisions of Section 15 of the said Act prohibits taking any action in any Court inter alia in respect of eviction of any unauthorised occupant, thus leaving the Government the only option of proceeding under the said Eviction Act. In any view of the matter Mrs. Purohit could not point out as to how this inaction on the part of the Government has prejudiced the petitioner. Surely a party who was benefited by the inaction cannot be heard to complain.

6. Mrs. Purohit next submitted that Sections 4 and 5 of the said Eviction Act are required to be read together and therefore, it was not enough that the occupant was declared an unauthorised occupant. It was her submission that it was also obligatory to clearly demonstrate the reasons for asking the unauthorised occupant to vacate. Mrs. Purohit in support of her submission relied on a decision of the Division Bench of this Court in the matter of Minoo Framroze Balsara Vs. The Union of India and others, , wherein the Division Bench inter alia held that provisions of Sections 4 and 5 of the Eviction Act deal with the procedure for eviction of an unauthorised occupant and must be read together and that prima facie satisfaction of the Estate Officer is a sine qua non of the issuance of the Show Cause Notice. The prima facie satisfaction must be two-fold, firstly, that the addressee is in unauthorised occupation of public premises, and, secondly, that he should be evicted. We have no quarrel with the said decision. The quarrel we have is qua the submission made by Mrs. Purohit to the effect that although in the instant case it may appear that the Impugned Order discloses the first satisfaction viz. about the unauthorised nature of occupation, as regards the second satisfaction viz., as regards the necessity to evict the petitioner there is no such finding arrived at. In the instance, however, we are satisfied that both the aspects are gone into by the Estate Officer while passing the impugned Order. Mr. Rana drew out attention to the Show Cause Notice dated 10th December, 1991 issued on the petitioner in which it was clearly mentioned that the premises in question were meant only for serving soldiers and the same was required for allotment to them. Not only that but the Impugned Order after discussing the facts and after discussing various submissions made by both the parties viz., the Administrative Commandment and the Petitioner ultimately says that taking into consideration all the aspects brought out before the Estate Officer, he came to the conclusion that the petitioner and other legal heirs continuously staying in the suit premises were unauthorised occupants of the Government hired premises. The submission which were made on behalf of the Government by the Administrative Commandant was that the said premises be made available to the Station Headquarters, Bombay for allotment to the other bona fide defence personnel who are posted at Bombay for 2-3 years tenure and who are on waiting list for accommodation. Thus there was sufficient materials before the Estate Officer to be satisfied that the Petitioner was required to be evicted and after referring to the material and after taking into consideration all the aspects of the matter the Impugned Order was passed. Mr. Rana is also right in his submission that the order which is required in law to be a speaking order

need not be a lengthy or an elaborate one. According to him an order in question must show that there has been an application of mind. We see considerable force in Mr. Rana's submission. In our opinion, the Impugned Order records the two-fold satisfaction of the Estate Officer. The underlying reason of an order to be a speaking order is to demonstrate that there is a proper application of mind, that the order is neither the result of caprice of arbitrariness nor the result of consideration of any non-germane or extraneous considerations. In these circumstances, we cannot accede to Mrs. Purohit's submission.

7. Lastly Mrs. Purohit submitted that the moment the deceased became an unauthorised occupant, he should have been put to notice that he had become unauthorised and the action of eviction should have been initiated against such a person. It was her submission that the delayed action after unreasonably long time rendered the remedy of eviction available to the Government unreasonable and vexatious. In this respect Mrs. Purohit relied on two decisions. The first was a decision of the Privy Council in the case of *Commr. of Income Tax. Bombay Presidency and Aden v. M/s. Khemchand Ramdas*, reported in AIR 1983 PC 175 and the second decision was of the Supreme Court in the case of *Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Others*, . We find no substance in this argument. The reliance placed by Mrs. Purohit on these two decisions is totally misconceived. We are in the present case concerned with recovery of public premises from an unauthorised occupant. To put a fetter on the right of the Government to recover possession would result in Government losing forever the premises owned or taken on lease or requisitioned by it. Legislature in its wisdom has rightly not put any time restrictions on the powers of the Government to recover public premises. Lastly Mrs. Purohit submitted that rehiring policy was discriminatory in nature. The said argument, in our opinion, does not survive in view of the fact that Mrs. Purohit attached rehiring in case of Venugopalan only. In respect of Venugopalan, as earlier mentioned the Division Bench in its decision dated 5th October 1993 in Writ Petition No. 611 of 1984 has clearly come to the conclusion that there was no discrimination in the case of Venugopalan. Apart from the question of discrimination, consideration of the rehiring by the Government under its rehiring policy would arise only when the petitioner vacates the premises. As of now admittedly petitioner has not vacated the premises. Only after this is done, the question of rehiring the premises will be considered. In the event of Government declining to rehire, the petitioner would become entitled to agitate this issue of discrimination and not before. In our view this submission is not only unavailable to Mrs. Purohit in view of the said finding of the Division Bench but also premature.

8. We do not find any substance in any of the submission made by Mrs. Purohit. In our view, the premises were allotted to the deceased and on retirement from service the allotment became unauthorised and thus the deceased and after his death his legal heirs became liable to be evicted under the said Eviction Act. After the death of the deceased, the petitioner has continued to remain in possession. The monthly lease in favour of the Government is subsisting as the

same is not terminated. On the Original allottee (Petitioner's landlord) becoming the owner of the premises, the monthly lease cannot automatically come to an end. The Petitioner is found to be in an unauthorised occupation of the public premises viz., the said flat in Patankar Building. We do not find any infirmity in the Impugned Order. Therefore, the petition requires to be dismissed.

9. Looking, however, to the circumstances relating to accommodation in Bombay, the following order. If the petitioner hands over possession of the flat to the Respondents, the original application for rehiring which was made by the deceased during his lifetime should be considered sympathetically especially as the petitioner is the widow of the original allottee. We are informed that she is more than 70 years of age and is ailing. This, provided that the petitioner complies with all the necessary conditions relating to such rehiring. The application for rehiring should be considered along with any fresh material which the petitioner may place before the concerned authorities. The decision to be taken preferably within 4 months from today. This is on condition that the petitioner vacates the premises on or before 30th November, 1996.

10. In case of failure of the petitioner to vacate the premises on or before 30th November, 1996, the Respondent will be at liberty to take such steps against the petitioner as may be available to them. It is made clear that till the premises are vacated as indicated above, the conditions put by this Court while passing the order dated 24th January, 1996 on petitioner's Civil Application No. 302 of 1996 taken out in the writ petition to remain in force. Petition thus dismissed with the above directions. Rule discharged.

Certified copy expedited.

Petition dismissed.