
(1969) 03 BOM CK 0027

In the Bombay High Court

Case No : Special Civil Application No. 2275 of 1967

Rangubai Pandurang Joshi

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 25-03-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1969) 71 BOMLR 624 : (1969) MhLj 880

Hon'ble Judges : Patel, J;Madon, J

Bench : Division Bench

Judgement

Madon, J.—This is a petition under Article 226 of the Constitution to quash an order of requisition under the Bombay Land Requisition Act, 1948, made on January 31, 1950, and an order of allotment made on June 16, 1967, and for directing the State of Maharashtra and the Collector of Thana, who are respondents Nos. 1 and 2 respectively, to hand over possession of the requisitioned property to the petitioner as its owner on the ground that the said order of requisition has ceased to be operative or lapsed due to the Government not having made use of it and consequently, therefore, the property was not under requisition at the date when the impugned order of allotment "was made.

2. One P.V. Joshi, the petitioner's husband, was the owner of a building known as "Joshi Bungalow" situate at Kharkar Ali, Thana. By the said order of requisition dated January 31, 1950, the ground floor of Joshi Bungalow was requisitioned by the then State of Bombay under Sub-section (7) of Section 5 Wedded, March 25, 1969. Special Civil A.I.R.[1906] Mad. 172, of the said Act. The said order is general in its terms and does not specify the public purpose for which the premises were requisitioned. The premises were thereafter allotted to one V. N. Shastri, Clerk of the Court, of the District Court, Thana. In 1956, Shastri was transferred to Satara. Thereafter, by an order of allotment dated September 25, 1956, the premises were allotted to respondent No. 3 who had become the Clerk of the "Court in Shastri's place. On October 6, 1957, Joshi died leaving the

petitioner as his only heir and legal representative. Having come to know that respondent No. 3 was due to retire in 1961, the petitioner by her letter dated July 5, 1961, pointed out the said fact to the then Collector of Thana and requested him that instead of allotting the said premises to someone else, the same should be given back to her as she was a retired teacher and had decided to start a children's education centre in the said premises. As no reply was received to the said letter, the petitioner sent a reminder on July 22, 1961. By his reply dated October 12, 1961, the Collector of Thana intimated to the petitioner that her request could not be considered at that stage. The petitioner made one further application to the Collector to the same effect on October 14, 1961. By his letter dated October 15, 1961, the petitioner was informed by the Collector that her request could not be granted. Meanwhile, on November 9, 1961, respondent No. 3 retired from Government service.

3. In spite of respondent No. 3 having retired from Government service, he was allowed by the Government to continue in occupation of the requisitioned premises along with members of his family including respondent No. 4 who is his daughter. It is averred in the petition that respondent No. 3 represented to the petitioner that he was granted an extension till the end of 1963. Respondent No. 3 has denied having made any such representation in his affidavit in reply. The subsequent correspondence, however, seems to support the petitioner's case that the representation as alleged was made to her. By her letter dated February 9, 1967, the petitioner once again approached the Collector of Thana with a request that the said premises should be handed back to her. In the said letter she stated that she had come to understand that respondent No. 3 had retired in or about the year 1963, yet he was allowed to continue in occupation of the said premises and that this fact showed that the Government did not require the requisitioned premises for its purposes. According to the petitioner, she had a talk thereafter with the then Collector of Thana who, it is alleged by the petitioner, admitted that it was through mistake that respondent No. 3 was allowed to continue in the said premises. In the affidavit in reply of respondents Nos. 1 and 2, this allegation is neither denied nor is it stated that it is not admitted. All that is stated in the said affidavit is that there is nothing on record to suggest that the petitioner met the then Collector personally or that he told her that respondent No. 3 had been allowed to occupy the said premises through mistake. This affidavit is made by the present Collector of Thana, M. K. Tamhane. The officer who was the Collector of Thana at the relevant time has not made any affidavit. No explanation is forthcoming for this. Obviously, the said Tamhane can have no personal knowledge of any talk which took place between the petitioner and the then Collector of Thana. Even the statement that there is nothing on the record to suggest that the petitioner met and had a talk with the then Collector of Thana is not correct, for on March 3, 1967, the petitioner made another application to the same purpose to the then Collector of Thana. In this application, she has referred to this interview. This application is not only referred to in the petition but the petitioner has annexed a copy of it to the

petition. This application is admitted. The original application would naturally be on the files of the Collector. According to the rules of pleadings, it must, therefore, be taken to be admitted by respondents Nos. 1 and 2 that the petitioner did meet the then Collector of Thana and that the Collector did admit to the petitioner that it was through mistake that respondent No. 3 was allowed to continue in occupation of the requisitioned premises. Even apart from this, the subsequent events would show that the Government knew that the occupation of respondent No. 3 in the said premises could not be an authorised one and would be contrary to the provisions of the Bombay Land "Requisition Act.

4. On June 16, 1967, the then Collector of Thana made an order allotting the said premises to respondent No. 4 who had joined the Treasury Office in Thana as a clerk on March 18, 1966. The affidavit in reply of the said Tamhane sets out what transpired during the interval between the applications made by the petitioner and the said allotment order and it makes interesting reading. From this affidavit it appears that in view of the application made by the petitioner, an eviction order was passed on April 5, 1967, u/s 8B(1) of the said Act directing respondent No. 3 to vacate the said premises within 15 days from the receipt of the said letter. Respondent No. 3 thereupon made an application on April 15, 1967, to the Collector of Thana requesting that he should be allowed to continue in occupation of the said premises as long as he was staying in Thana. By his reply dated May 5, 1967, the Collector intimated to respondent No. 3 that according to Government orders it was not possible to allow respondent No. 3 to retain the requisitioned premises for a further period as the landlady had objected to his occupation and asked respondent No. 3 to vacate the said premises on or before May 15, 1967. On May 15, 1967, respondent No. 3 made another application to the Collector in which he stated that since the order of eviction was made only one month ago, he had not sufficient time to make efforts for securing suitable premises. Respondent No. 3, therefore, requested the Collector to allot the said premises to his daughter, respondent No. 4, who was then 20 years old and had recently joined Government service. In the said application, it was stated that an application in that behalf was also being submitted to the Collector by respondent No. 4. Respondent No. 4's application is dated May 16, 1967. The ground made out in the said application for seeking an allotment in her favour is that though respondent No. 3 had retired from Government service in November 1961, he was allowed to continue in occupation by the then Collector of Thana in January 1962 but had now been directed to vacate and as she was a joint member of her father's family and a State Government employee, the said premises should be allotted to her. Thereupon, the impugned allotment order dated June 16, 1967, was passed in favour of respondent No. 4. The said order expressly refers to four documents, namely, the original order of requisition dated June 31, 1967, the original allotment order in favour of respondent No. 3, the said application dated May 15, 1967, from respondent No. 3 and the said application dated May 16, 1967, from respondent No. 4. A copy of the said impugned order was served not only upon respondent

No. 4 but also upon respondent No. 3.

5. In the petitioner's submission, when requisitioned premises are allotted to a Government servant, his occupation after retirement from Government service is not a public purpose under the Bombay Land Requisition Act. It is the petitioner's case that the fact that for a period of nearly six years the said premises were allowed to be used by the State Government for a purpose other than a public purpose would show that the State Government did not require the said premises for any public purpose and ought, therefore, u/s 9(7) of the Bombay Land Requisition Act, to have released the said premises from requisition. It is further submitted that even though the Government may have failed to derequisition the premises, in the circumstances of the case the said requisition order had ceased to be operative or had lapsed by reason of the State Government not availing itself of it, and the petitioner had become entitled to possession of the said premises, and the said subsequent allotment order in favour of respondent No. 4 did not affect the position as it was passed mala fide, being merely a colourable device to perpetuate the occupation of respondent No. 3 in the said premises. In support of his arguments Mr. Chitale, learned advocate for the petitioner, has relied upon a decision of a learned single Judge of the Madras High Court in Menghraj Thekurdas Vs. The Accommodation Controller, Madras, . This is a case directly in point, the material facts being also very similar to the facts of the present case. In that case, the ground floor of a house was requisitioned in 1952 by the State Government u/s 3 of the Madras Buildings (Lease and Rent Control) Act, 1949. The petitioner purchased the building in 1963. He needed the ground floor for the occupation of his son. The occupant of the ground floor vacated on December 26, 1963 and handed over the key to the Accommodation Controller. Thereafter, the petitioner sought the release of the premises, but he was informed that the premises were being allotted to another Government servant, and an allotment order was in fact subsequently made. The petition originally proceeded on a different ground, but it subsequently came to the knowledge of the petitioner that the original allottee of the ground floor, one Sumati, who was a Central Government employee, was transferred on December 12, 1959, from Madras to Calcutta. His wife, however, continued to occupy the said premises even though her husband was no longer employed in the City of Madras and was, therefore, not entitled to any allotment of accommodation. On February 9, 1961, the said Sumati retired from Government service. The petitioner thereupon based his case on the ground that when the said Sumati ceased to be employed in Madras, the Government were not entitled to retain possession of the premises unless it was needed for any Government purpose or for the purpose of any Government servant, and the wife of the said Sumati who was actually in occupation from December 12, 1959, onwards was not entitled to occupy it. It was further urged that the fact that from that date till December 26, 1963, a non-Government servant was permitted to be in occupation of the premises deprived the Government of any right to allot the premises to a Government servant four years later. These contentions were accepted by the

learned Judge who held that the Government's power to requisition the premises and allot it to a Government servant stemmed from Section 3 of the Madras Buildings (Lease and Rent Control) Act, 1949, and it was obvious from the provisions of the said Act that if the Government had no use for the premises either for the purposes of the State or for the purposes of an employee of the State or of the Central Government, being the purposes for which the State Government could requisition the premises under the Madras Act, then the State Government had no further right to retain control of the premises. It was further pointed out that though under the Madras Act the Government became the statutory tenant, it could hold the premises only for the purposes mentioned in the said Act. The learned Judge further observed (p. 173) :

...If within a reasonable time after the vacating of the premises by a Government servant may be a month or two, the Government allot it to another Government servant or utilise the premises for their own purposes, they would be acting within the statute. But to say they were ignorant that the Government servant who had been allotted the premises had ceased to be a Government servant and they allowed the premises to be occupied by members of that ex-Government servant's family, and claim that they acted bonafide, passes my comprehension.

Accordingly, the Court quashed not only the order of allotment which was made during the pendency of the petition but issued a writ of mandamus directing delivery of possession of the premises to the petitioner. This case was approved and followed by another learned single Judge of the same High Court in *A. Narasinga Rao and Another Vs. The State of Madras and Others*, .

6. In our opinion, these two decisions correctly lay down the law. Having regard to the nature of a requisition order, the object for which it is made and the fact that the making and the continuance of a requisition order deprives, or in any event imposes restrictions upon, a citizen's right to hold and enjoy his property, it must follow that unless and until the requisitioned property is required by the Government and used by the Government for a purpose authorised by the relevant statute, the Government is under an obligation and a duty to release the premises from requisition. Thus, if the premises are not used for any public purpose for a length of time, which_ is unreasonable, or are allowed to be used for a purpose other than a public purpose, it would show that the Government does not require the premises for the purpose for which they were requisitioned. In such a case, even if_ the Government chooses not to derequisition the premises, the order of requisition ceases to be operative and lapses by reason of the Government failing to avail itself of it.

7. Mr. T.R. Andhyarujina, learned Counsel for respondents Nos. 1 and 2, sought to distinguish the Madras? authorities relied upon by the petitioner on the ground that unlike under the Bombay Land Requisition Act, under the Madras Act on the premises being requisitioned, the Government is deemed to be the statutory tenant of the premises and that there was no provision for derequisitioning a property. In Mr. Andhyarujina's submission, under the Bombay Land Requisition

Act the premises would continue under requisition until released from requisition by the State Government u/s 9(1) by passing a derequisition order. In our opinion, the differences between the Madras Act and the Bombay Act have no bearing on the decision of the question before us. The power of the State Government to requisition property arises only under the Bombay Land Requisition Act. The Government is not entitled in law to use the requisitioned premises or to permit its user for any purpose which would not be a public purpose. From this it must follow that if the property is no longer required for such a purpose, the Government is under a duty and an obligation to exercise its powers u/s 9 and to release the property from requisition and to deliver possession to its owner. The failure of the Government to do so cannot entitle it to take advantage of its own breach of duty and to continue to use the property for a purpose which is not a public purpose. In such a case, the Court acting under Article 226 can compel the Government to carry out its duty.

8. It was next argued that as in the affidavit in reply of respondents Nos. 1 and 2 it is averred that the said premises "were at all times required by Government for accommodating Government personnel and Government had at no time considered the release of "the premises from requisition", it should be accepted that the Government still needs the premises for a public purpose. This statement in the affidavit makes surprising reading in the light of the undisputed facts of the case. Admittedly, the premises, which now according to the Government were at all times required for accommodating Government personnel, were allowed to be occupied for a period of nearly six years by a person who was not a Government employee. In view of this, we cannot attach any weight to the aforesaid statement.

9. The occupation by respondent No. 3 was next sought to be justified on the basis of a Government policy referred to in the said affidavit in reply. According to respondents Nos. 1 and 2, it is the policy of the Government that a retired Government servant should be allowed to continue in the requisitioned premises subject to the objection from the landlord and that it was in pursuance of this policy that respondent No. 3 was permitted to continue in occupation. Upon our inquiring from Mr. Andhyarujina, learned Counsel for respondents Nos. 1 and 2, we were informed that there is no Government resolution enunciating such a policy. Even if there were, it would not make any difference. Government resolutions or executive or departmental instructions cannot transform a purpose which is not a public purpose into a public purpose under the Bombay Land Requisition Act. Mr. Andhyarujina frankly conceded that the occupation of respondent No. 3 after his retirement from Government service was not a public purpose and cannot be supported as being a public purpose. He, however, submitted that had the petitioner approached the Court under Article 226 prior to the issue of the allotment order in favour of respondent No. 4, the Government would have derequisitioned the premises. We did not expect such a contention to be advanced by the Government. It is surprising that the Government should, in order to carry out its obligations in law, require a citizen to first approach the

High Court under Article 226. The emphasis in the so-called policy on the objection on the part of the landlord is also significant. It is a clear admission on the part of the Government that the Government continues to permit its retired employees to occupy the premises knowing that it has no right in law to do so. In many cases, the landlords would be ignorant when the allottee, who is a Government servant, would be retiring from service or whether he has retired from service. To permit an unauthorised occupant to continue in occupation of requisitioned premises without the knowledge of the landlord and taking advantage of his ignorance would, in our opinion, amount to a fraud on the statute and on the rights of the owner of the premises.

10. It was next submitted that in any event the making of the said allotment order of June 16, 1967, shows that the premises are now required for a public purpose, namely, accommodating" a State Government servant. On the facts of this case, we are satisfied that the said order of allotment is merely a colourable device to perpetuate the continuance in occupation of respondent No. 3. The application dated May 15, 1967, made by respondent No. 3 to allot the premises to his daughter, respondent No. 4, so that he may continue to occupy it, the reference to that application in the said order of allotment and the service of the said order of allotment upon respondent No. 3 all show that the real purpose of the said order of allotment was not to provide accommodation to a Government servant but to accede to the request of respondent No. 3 to allow him to continue in occupation of the said premises along with his family. Even apart from this, since prior to the date of the order of allotment the said order of requisition had exhausted itself or had lapsed due to disuse and had ceased to be operative as held by us above, there was no power left in the Government to issue any order of allotment in respect of the said premises.

11. In the result, we quash both the said order of requisition dated January 31, 1950, and the said order of allotment dated June 16, 1967. We also issue a writ of mandamus and an order and direction under Article 226 of the Constitution directing the State of Maharashtra and the Collector of Thana to hand over vacant possession of the said premises to the petitioner within one month from today.

12. Respondents Nos. 1 and 2 will pay to the petitioner the costs of this petition.