
(1997) 12 BOM CK 0053
In the Bombay High Court
Case No : Writ Petition No. 95 of 1990

Rasheed A. Maskati and another

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 24-12-1997

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 15B
Trusts Act, 1882 — Section 47

Citation : (1997) 12 BOM CK 0053

Hon'ble Judges : Y.S. Jahagirdar, J; Ashok A. Desai, J

Bench : Division Bench

Advocate : S.G. Page with A.G. Prabhu instructed by C.M. Chokhani, for the Appellant; Anjali Desai for Respondents Nos. 1 and 2, Dara Zaiwalla with V.C. Kotwal, for the Respondent

Final Decision : Allowed

Judgement

Y.S. Jahagirdar, J.—This petition is filed by the owner-landlord of the premises situated at "Rashid Mansion", Colaba, Bombay-400 005 and numbered as Flat No. A/2. The petitioners have mainly sought the relief of declaration that the requisition order dated 30th November, 1949 and the consequent allotment order dated 30th November, 1949 have ceased to be valid and binding since the requisition has continued for 30 years and more. The petitioners also seek delivery of actual possession of the premises from respondents Nos. 1, 2 and 3. It may be stated that respondent No. 3 claims to be heir of original allottee.

2. One Dr. N. A. Contractor was allottee after the premises were requisitioned by the Government. He is said to have expired on 12th of March, 1967. It is a matter of record that on 11th of July, 1977, by an order passed by respondent No. 2, Keki Pirojshah Bulsara husband of the present respondent No. 3, was directed to vacate the flat. By an order of 7th of August, 1978, the Inspector from the office of the Controller of Accommodation was authorised to take actual possession of the said flat. A Miscellaneous Petition was filed in this Court being

Miscellaneous Petition No. 1149 of 1978 squarely and solely based on the policy adopted by the Government not to disturb the occupation of the heirs of original allottee. In the said petition, the owner - Trust was not joined as party respondent. This Court, on the basis of policy then existing, allowed the petition and quashed the order of possession which was issued by respondent No. 2.

3. On 18th of January, 1989 and 11th of July, 1989, the petitioners had requested the Government to derequisition the flat since they have continued for impermissible period under requisition. Since the Government did not take any action, the present petition was filed on 3rd of January, 1990.

4. In the meantime, the competent authority, after issuing a show cause notice to respondent No. 3 and after giving hearing to the said respondent, passed an order of eviction on 9th of October, 1995 and the appeal, at the instance of respondent No. 3, was dismissed on 11th of March, 1996. It is not disputed before us that this order of 11th of March, 1996 was not challenged further and has attained finality.

5. Mr. Page, learned counsel for the petitioners, relying on two decisions of the Apex Court in the case of (1) H.D. Vora Vs. State of Maharashtra and Others, and (2) in the case of Grahak Sanstha Manch and others Vs. State of Maharashtra, , has vehemently contended that in the light of the ratio laid down by the Apex Court in two decisions referred to above, the order of requisition is liable to be quashed since it has continued to remain in force from 30th of November, 1949. Mr. Page has also contended that on quashing of order of requisition, the petitioners' Trust would be entitled to actual possession of the flat in question, more so in the light of two orders passed by the competent authority and the appellate authority on 9th of October, 1995 and 11th of March, 1996 respectively. Hence, Mr. Page has pressed into service two decisions of the Apex Court (supra) for seeking possession of the flat after the same are directed to be requisitioned.

6. Mr. Zaiwalla, learned counsel for respondent No. 3, has referred to the affidavit in reply filed to the present petition and has mainly raised two contentions. Firstly, Mr. Zaiwalla contends that the petition, as filed by only two trustees, is not maintainable. According to Mr. Zaiwalla, the petition ought to have been filed by the Trust by joining all the trustees to the petition. For his proposition that the petition of the instant nature is not maintainable, Mr. Zaiwalla has placed reliance on the decision in the case of Atmaram Rachhodbhai Vs. Gulamhusein Gulam Mohiyaddin and Another, .

7. We are not impressed by the submission of Mr. Zaiwalla that the petition as filed by two trustees is not maintainable. The reliance placed on the judgment of the Full Bench of Gujarat High Court in Atmaram's case (supra), is also wholly misplaced in the matter before the Full Bench. The Court was especially concerned with the import of section 47 of the Indian Trust Act and while considering the scope of section 47, the said decision is rendered. On the facts in

the said case of *Atmaram*, it is noticed that the issue which was before the Court was pertaining to the authority of one of the trustees to put an end to admitted contractual obligation of lease and while considering the said factual aspect in the light of section 47, the Full Bench has observed :

"that unless the instrument of trust otherwise provides, all co-trustees must join in filing a suit to recover possession of the property from the tenant after determination of the lease. No one single co-trustee, even he be a managing trustee unanimously chosen by the co-trustees, can maintain such a suit against the tenant without joining to other co-trustees. All co-trustees must be joined in the suit and if any one or more of them are unwilling to be joined in the suit as plaintiffs or for some reason or the other it is not possible to join them as plaintiffs, they must be impleaded as defendants so that all co-trustees are before the Court."

Now, these observations have to be appreciated in relation to the facts involved in the said case. An admitted contract of tenancy was sought to be put an end to by one of the trustees. The Full Bench, in the context of section 47 of the Indian Trust Act, has, therefore, come to the above conclusion. In the present case, there is no such admitted contractual relationship which is sought to be put an end to. As a matter of fact, we are of the opinion that the petition and the reliefs of the instant nature as claimed in the present petition can even be asked for by one of the beneficiaries of the Trust. The possession of the premises illegally continued by the Government is sought to be reverted back to the Trust and not the trustees. For filing such petition, it is enough if a person having interest in the Trust, moves the Court. Hence, the contention of Mr. Zaiwalla that the petition, at the instance of two of the trustees, is to be rejected. It may be mentioned that in reply to the present allegation by rejoinder, it has been stated that at the relevant time when the petition was filed, the present petitioners were only trustees of the Trust. However, we are not going into the correctness of this aspect in the light of the view which we have taken about the maintainability of the petition.

8. The second contention of Mr. Zaiwalla is based on the Ordinance issued by the State of Maharashtra on 7th December, 1996 amending the provisions of Bombay Rent Act and Bombay Land Requisition Act and also the Bombay Government Premises Eviction Act and protecting occupants of certain categories of allottees and their heirs. What is sought to be contended by Mr. Zaiwalla is that assuming that the present petition is maintainable and assuming that the order of requisition is liable to be quashed, the present occupant i.e. respondent No. 3 becomes a statutory tenant of the Trust and, therefore, even if the order of requisition is quashed, respondent No. 3 is not liable to be evicted from the premises and the said respondent will have to be recognised as statutory tenant in the light of the Ordinance. Therefore, Mr. Zaiwalla submits that no order of actual derequisition can be passed by the Government after the Ordinance and even if this Court directs derequisition of the premises based on the ratio laid

down in the two decisions referred to above, the premises cannot be directed to be handed over to the Trust since respondent No. 3 has acquired status of the tenant. Mr. Zaiwalla has also referred to the order passed by the appellate authority on 11th of March, 1996, especially relying on the operative part of the said order which reads as follows :-

"I therefore, uphold the order of the Competent Authority dated 9th October, 1995. Smt. Thrity Balsara and Shri Piloo Contractor are directed to vacate the premises at Flat No. A-2, Rashid Mansion, Colaba Road, Colaba, Mumbai 400 005 by 31st July, 1996 failing which the premises will be got vacated."

Relying on this operative part, Mr. Zaiwalla contends that the Ordinance protects the persons who are in lawful possession on 11th of June, 1996 and since respondent No. 3 was directed to vacate the flat by 31st July, 1996, she was the person who is allowed to remain in occupation by the Government and hence, entitled to the protection of Ordinance.

9. Mr. Zaiwalla, for his submission that he gets protection under the Act, has also placed reliance on the judgment of the Apex Court in the case of State of Punjab Vs. Parsini and Others, .

10. Mrs. Desai, learned counsel for respondents Nos. 1 and 2, has pointed out that undoubtedly Government has issued Ordinance on 7th of December, 1996 giving protection to certain categories of occupants. The said Ordinance has also been converted into an Act. The present respondent No. 3 cannot be said to a person entitles to such protection. She has also pointed out that protection is given only to certain categories as mentioned in the Ordinance and the present occupant is not one of such persons and, therefore, not entitled to protection of the said Ordinance. We are referring to the provisions of the Ordinance as pointed out to us on the basis that the Act which has been enacted by the legislature thereafter is exactly on the same lines and the provisions of the Ordinance and the Act are identical.

11. To appreciate the contentions of Mr. Zaiwalla, reference to certain provisions of the Ordinance is necessary.

12. So far as the order of the requisition is concerned, admittedly, the same is continuing from 30th of November, 1949. The Apex Court in terms has disapproved such continued requisition in the decisions referred to above. In the light of these two decisions, the order of requisition will have to be quashed. There is not much dispute on this legal proposition. Much legal debate, however, is focused on the fact as to whether after the derequisition is ordered, whether this Court can direct delivery of actual possession and to appreciate this aspect, reference to certain provisions of the Ordinance is necessary.

13. It would be useful, as contended by Mr. Zaiwalla, to refer to the statement of objects and reasons for promulgating the said Ordinance.

"3. As a matter of policy, the State Government has stopped requisitioning of

new premises except in some special cases. As a result of this policy and also due to continued acute shortage of accommodation with Government and astronomical rise in the cost of properties in Mumbai, it would not be possible for Government to give suitable alternative accommodation to all such allottees if, applying the ratio of the said Supreme Court Judgment the Government has to vacate all the requisitioned premises. The situation is, therefore, likely to result in the Government allottees presently in occupation of the requisitioned premises being rendered without any office accommodation or homeless. It is imperative to find a solution to this grave situation and to give some kind of statutory protection to these allottees of the requisitioned premises.

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

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

The protection is given to certain categories of persons. Firstly, a person has to be a Government allottee. The Government allottee has been defined in the Ordinance and in the Act. The definition with which we are concerned in the present petition is pertaining to the allotment for residential purposes and the said definition reads as follows :-

"(a)

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

It is, therefore, implicitly clear that an heir of Government allottee, who is allowed by the State Government to remain in occupation or possession of such premises, is also included in the definition of the Government allottee. Now, section 15B which is introduced in the Bombay Rents, Hotel and Lodging House Rates Control Act, reads as follows :

"15B. (1) On the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Ordinance, 1996 (hereinafter in this section referred to as "the said date") -

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

(b) the Government allottee in respect of the premises requisitioned or continued under requisition and allotted to him as referred to in sub-clause (b) of clause (1-A) of section 5, shall, notwithstanding anything contained in this Act, or in the Bombay Land Requisition Act, 1948, or in any other law for the time being in force, or in any contract or in any judgment, decree or order of any Court passed on or after the 11th June, 1996. be deemed to have become, for the purposes of this Act, the tenant of the landlord; and such premises shall be deemed to have been let by the landlord to the State Government or, as the case may be, to such Government allottee, on payment of rent and permitted increases equal to the amount of compensation payable in respect of the premises immediately before the said date.

(2) Save as otherwise provided in this section or any other provisions of this Act, nothing in this section shall affect, -

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

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

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

Thus, notwithstanding any contract judgment, decree or order of any Court passed on or after 11th of June, 1996, a Government allottee as defined were given status of the tenant on payment of rent and permitted increases, etc. Therefore, two things are necessary to be established. First is that the person is covered by definition of Government allottee and such Government allottee must have been allowed by the State Government to remain in occupation or possession of the premises. On harmonious reading of these provisions, we feel that the instant case is not covered by the ordinance for two reasons. Firstly, status of the heir as Government allottee would come to an end on passing of an order by competent authority on 9th October, 1995 directing eviction from the suit premises. The order of the Appeal Court dated 11th of March, 1996 is a confirming order and that order directs that respondent No. 3 shall vacate by

31st of July, 1996. By no stretch of imagination, such an order can be construed to mean that the Government was consciously allowing the heirs to remain in occupation or possession of the premises. A direction to vacate by a particular date in fact is a clear indication of the Government to the contrary. After the order of eviction, possession cannot be a lawful possession and order directing to vacate the premises by a particular date is a clear intention of the Government not to allow the occupant to remain in possession. Thus, on both these counts, the present occupant cannot be said to be covered by the definition of Government allottee.

14. Assuming that the present occupant is covered by the word "Government allottee", section 15B does not save eviction on the basis of the orders passed by such competent authorities prior to coming into force of the Ordinance. As noted above, the first order of eviction is passed on 9th of October, 1995. If occupants were to be protected, whether ordered to be evicted or not, the legislature would have specifically made reference to such order passed by the competent authority prior to the appointed date. The reference u/s 15B is only to the orders, decrees, judgment of the Court. The competent authorities already having passed orders before the appointed date directing eviction, such orders are not saved or eliminated from operation and wherever there is an order of competent authority prior to the appointed date, it is inevitable sequitur that such person must vacate notwithstanding the Ordinance and the consequent Act. Thus, we are of the firm opinion that taking into account the provisions of the Ordinance and the Act applying to the facts of the present case, the present respondent No. 3 cannot be said to be a Government allottee as defined in the Ordinance or heir of allottee who is entitled to protection of the said Ordinance. Hence, the contention of Mr. Zaiwalla that delivery of actual possession cannot be ordered in the light of the Ordinance issued by the Government of Maharashtra on 7th of December, 1996 is to be rejected.

15. A casual attempt made by Mr. Zaiwalla to establish tenancy also has to be made a reference to. Mr. Zaiwalla has pointed out that the letter issued by the Controller of Accommodation on 14th of June, 1954 intimating the original allottee that the Government will have no objection to allow direct tenancy if the landlord was agreeable. Based on this letter, Mr. Zaiwalla contends that respondent No. 3 as also the earlier allottee was accepted as tenant by the Trust. We are afraid that we are not impressed by the said submission for multiple reasons. Firstly, no such consent letter has been produced from the landlords, there is nothing on record to indicate even the payment of rent at any subsequent stages, no rent receipts have been produced and what is more glaring and fatal is the fact that had there been any truth in the contention of direction tenancy as pleaded today, that would have been the first bone of contention by the said respondent when the petition was filed in this Court as back as in 1978. Admittedly, no such contention is raised in the said petition which was disposed of on 12th of November, 1981. This plea of tenancy is also conspicuously lacking in the proceedings before the competent authority. Thus,

taking overall view of the matter, the contention of Mr. Zaiwalla that the allottee has become direct tenant of the Trust deserves to be rejected.

16. In the result, the petition is allowed. The order of requisition dated 30th of November, 1949 as also the consequent allotment order dated 30th of November, 1949, Exhibits "A" and "B" to the petition respectively, are quashed and set aside.

Respondent No. 3 is directed to vacate and hand over the actual and physical possession of the premises in question to the Trust viz. "Maskati Charitable Properties Trust".

It is made clear that trustees accepting possession from respondent No. 3, shall do so for and on behalf of the said Trust.

17. Rule is made absolute as above.

18. In the circumstances of the case, there shall be no order as to costs.

Respondents orally pray for stay of the operation of the order. Stay refused.