
(1954) 02 BOM CK 0003
In the Bombay High Court
Case No : Misc. Petition No. 116 of 1953

Sanwaldas Govindram

APPELLANT

Vs

State of Bombay and Another

RESPONDENT

Date of Decision : 25-02-1954

Acts Referred:

Bombay Displaced Persons Premises Control and Regulation Act, 1952 — Section 2, 4, 4(1), 5, 5(1)
Bombay Refugees Act, 1948 — Section 7
Government Premises (Eviction) Act, 1950 — Section 3

Citation : AIR 1955 Bom 192 : (1954) 56 BOMLR 970

Hon'ble Judges : Tendolkar, J

Bench : Single Bench

Advocate : S.T. Tijoriwalla and R. Jethmalani, for the Appellant; R.M. Kantawala, for the Respondent

Judgement

1. This is a petition for an appropriate " writ, direction or order against the State of Bombay and the Collector of Bombay and Bombay Suburban District restraining them from enforcing an order made u/s 4(1), Bombay Displaced Persons Premises Control and Regulation Act, 1952, ordering the petitioner to vacate certain premises of which he was in occupation.

2. It is the case of the petitioner that he is a displaced person and since about April 1948 he has been residing in the Chembur Relief Camp. According to him a barrack in the said camp being barrack No. T 283 was allotted to him for his residence & business and he was running a ration shop being ration shop No. C-6 in a part of the said barrack. On 21-6-1952, the petitioner was served with an order u/s 7, Bombay Refugee Act, 1948, directing the petitioner to leave the Chembur colony within a period of 3 days and not to re-enter the said colony.

Against this order the petitioner filed Miscellaneous Application No. 170 of 1952 and this Court held that Section 7, Bombay Refugee Act, was "ultra vires" and restrained the appropriate authority from enforcing the said-order against the

petitioner. Sanwaldas Gobindram Vs. State of Bombay and Another, . On 27-2-1953, the. petitioner was served with an order, made by the Collector of Bombay and Bombay Suburban District u/s 4 (1), Bombay Displaced. Persons Premises Control and Regulation Act, 1952, ordering him to vacate the barrack within one month from the date of the order, and it is this order which is challenged on the petition.

3. The petitioner's case is that he was a tenant of the said barrack, and even assuming that his tenancy is terminated, he is not liable to be evicted under the summary powers conferred upon the Collector of Bombay by Section 4(1), Bombay Displaced Persons . Premises Control and Regulation Act, 1952.

The Collector of Bombay by his affidavit in reply points out that no premises were ever allotted to the petitioner in the said camp, that the premises in question were in use initially for a ration depot for distribution of free rations to the inmates of the camp but later on when free distribution was stopped the depot was converted Into a ration shop and the person who had the license for the ration shop was permitted to use the premises for the purpose of the ration shop as well as for the purpose of his residence as a mere adjunct of the license to run the ration Shop.

The premises, therefore, changed hands every time the license of the ration shop changed. Prior to 1940 one Dayaram Hasmatrai was the licensee. In 1948 he took the petitioner as a partner. On 4-6-1949, the license was cancelled and the shop was transferred to Messrs. Tikamdas Assandas and Assandas Govermal. Subsequently the shop was transferred to the petitioner and Tolaram Kanchand and one Raghupal Budhoomal in April 1950 and they thus became licensees of the pre-mises In which the shop was to be run.

Thereafter in Rahupal's place one Manghupal Ranghupal was introduced, but as there were several irregularities "committed in running the said shop, the license issued to the petitioner and the said Tolaram Kanchand and Raghupal Budhoomal was cancelled by the Controller of Rationing on 27-6-1952, and it was directed that the said shop should be transferred to three other persons named by him. Upon such an order being passed the petitioner's license to occupy the barrack was terminated and thereafter he was in unauthorised occupation of the premises and liable to be evicted under the provisions of Section 4, Displaced Persons Premises Control and Regulation. Act, 1952.

4. An affidavit in rejoinder has been filed on behalf of the petitioner in which the facts I have set out above as to the ration shop and its various transfers have not been disputed, but what is alleged is that the petitioner was living in the premises with his family long before the ration shop was started. In what right he did so is, however, not stated nor is the petitioner in a position to produce any proof of allotment of the barrack to him at any time.

5. Now, assuming for a moment that the petitioner was an allottee of these premises, Mr. Tijoriwalla on his behalf has argued that an allottee under the

Displaced Persons Premises Control and Regulation Act is a tenant; and in support of his argument Mr. Tijoriwalla relies upon the fact that rent is payable by him in respect of such premises. "Rent" is referred to in terms in Section 4(1) (a)(i) and Sections 5(1) and 6(1) of the Act. Section 4(1) (a) (ii) also refers to subletting which Mr. Tijoriwalla contends indicates that the allottee is a tenant. However, it appears to me clear from the scheme of the Act that an allottee under the provisions of the Act is not a tenant.

Section 2(c) defines "Displaced persons premises" as premises allotted "for the use and occupation of displaced persons". The phrase "use and occupation" has a well denned legal connotation which is not appropriate to the status of a tenant. . It is in respect of such use and occupation that the Act provides that the allottee is liable to pay rent; but merely by describing the compensation payable for use and occupation as rent the person liable to pay such compensation does not in my opinion acquire the status of a tenant In my opinion, therefore, the contention of Mr. Tijoriwalla that an allottee of displaced persons premises under the said Act is a tenant is -not sustainable.

6. But in this particular case, on the facts which I have set out, the petitioner is not an allottee of any premises at all, and the question therefore of whether he is or is not a tenant by virtue of any allotment does not arise. On the facts as set out in the affidavit Of the Collector; which, as I have said before, have not been disputed, the petitioner was permitted to occupy these premises because he was a licensee of the ration shop which was to "be run in these premises. He thereby became a licensee of the premises for the duration of the license of the shop, and after the termination Of the license of the shop the license of the premises which went with it was automatically terminated, and he is only In the position of a licensee, whose license is terminated, continuing to occupy the premises.

7. Now, Section 4(1)(b) under which the order complained of has been passed authorises the competent authority to order that any person who is in "unauthorised occupation" of any displaced persons premises shall vacate the premises within a month from the date of service of a notice. Since the petitioner Was a licensee and his. license" has been validly terminated, there is no doubt in ray mind, that he is in unauthorised occupation of the premises, and therefore he is liable to be evicted by an order u/s 4(1)(b); but what is contended by Mr. Tijoriwalla on his behalf is that the words "is in unauthorised occupation" in Section 4(1)(b) should be interpreted as meaning that he was in unauthorised occupation to start with and continues to be in unauthorised occupation thereafter.

In other words, the word "is" should be interpreted in the present perfect tense and not in the present tense. Apart from any authority, and merely reading the Act by itself, I find it difficult to uphold such a contention. The words "unauthorised occupation" appear also in Section 5(2) of the Act. The latter section provides that the competent authority may assess damages payable by a person in unauthorised occupation on account of the use and occupation of the

premises.

Now, assuming for a moment that a person was granted a license for a few days and after the termination of the license continued to be in possession of the premises, I do not think it can be suggested that the competent authority cannot assess damages against him on account of the use and occupation of the premises as being a person in unauthorised occupation, and the question appears to my mind to be irrelevant as to whether at the time when he entered into occupation he did so lawfully or otherwise.

The liability to pay damages for use and occupation arises out of the fact that the occupation has become unauthorised although it might have been at its inception authorised. I see no reason to give to the words "unauthorised occupation" any other meaning In Section 4(1) (b). The period of time to be considered for the purpose of determining whether a person is in unauthorised occupation is the time when action is sought to be taken against him either by way of eviction u/s 4(1) (b) or rendering him liable for damages u/s 5(b), and in my opinion the question as to whether at its inception his occupation was authorised or not does not really arise.

8. However, Mr. Tijoriwalla has drawn my attention to a decision of a Division Bench of this Court in -- K.K. Verma and Another Vs. Union of India and Another, which had occasion to consider the provisions of Section 3, Government Premises (Eviction) Act, 1950, which provisions are in "pari materia" with the provisions of Section 4(1) of the Act I am dealing with. The learned Chief Justice in delivering the judgment observed as follows (pp. 360-361):

"....In our opinion, the Legislature was not so much emphasizing the point of time when it used the expression "any person is in unauthorised occupation" as the nature of the possession of the person referred to in that sub-clause. "Is" obviously is used in the present perfect tense rather than in the present tense and "is in unauthorised occupation" means that the occupation was unauthorised to start with and continued to be unauthorised throughout the time that the person was in possession,"

There is no doubt that these observations support the contention of Mr. Tijoriwalla; but when one looks at the facts of the case in which these observations were made, their Lordships were dealing with the position of a tenant holding over after his tenancy was terminated, and the question" for determination was whether a tenant holding over was a -person in unauthorised occupation and could be dealt with under the provisions of Section 3(b), Government Premises (Eviction)" Act, 1950. Their Lordships considered at considerable length the position in English and Indian law of a tenant holding over and pointed out that even after the termination of his tenancy the possession of a tenant holding over is juridical and not unauthorised."

Having determined this, with respect to their Lordships, it was not necessary for the purposes of determining the appeal to decide whether the word "is" was used

in the present perfect tense or the present tense, because in whichever sense it was used, if the possession of a tenant holding over is not unauthorised, he was not liable to be dealt with under the provisions of Section 3(b). Government Premises (Eviction) Act. Their Lordships also throughout the judgment dealt with the position of a tenant in contradistinction to the position of a trespasser and the case of a licensee whose license is terminated was not-present to the minds of their Lordships at all. More-over, after making the observations which I have quoted above and which have been relied upon by Mr. Tijoriwalla, the learned Chief Justice proceeded to observe (p. 361):

"...The Legislature never-intended that a person who entered with title and whose title came to an end and who continued in possession which possession was a juridical possession protected by law was a person of, whom it could be said that he was in unauthorised occupation of Government premises."

It is clear to me, therefore, that on the facts of the case what the learned Chief Justice emphasised was the nature of possession of a tenant holding over, and as it was juridical possession, it was held that he could not be said to be in unauthorised possession. That to my mind was the ratio of that decision, and, with respect to the learned Chief Justice, the observations which have been relied upon by Mr. Tijoriwalla appear to me to be purely, "obiter" and do not set out "the" ratio of that case.

I have no doubt that if the case of a licensee whose license has been terminated was present to the minds of their Lordships, they would have considered it and dealt with it; but since they were merely considering a distinction between the possession of a tenant holding over and a trespasser and emphasising that the tenant holding over had juridical possession while a trespasser never had the observations were made in that context only and ought, in my opinion, to be read as being applicable in that context only.

I am, therefore, not prepared to uphold the contention of Mr. Tijoriwalla that the word "is" in Section 4(1)(b), Bombay Displaced Persons Premises Control and Regulation Act, is to be interpreted in the present perfect tense. In my opinion the section does not concern itself with the nature Of possession at its inception. It concerns itself only with the nature of possession at the date when an order is proposed to be made u/s 4(1) (b), and If that possession is unauthorised, there is power in the competent authority to take appropriate action.

9. In my opinion, therefore, this petition must fail and the petition is dismissed and the rule discharged with costs.

10. Rule discharged.