

(1993) 10 BOM CK 0043

In the Bombay High Court

Case No : Review Petition No. 7 of 1992 in Writ Petition No. 3673 of 1990

Shetticar Dadu Mahabaleshwar

APPELLANT

Vs

The Maharashtra Housing and Development Authority and
Others

RESPONDENT

Date of Decision : 07-10-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 4, 114

Maharashtra Housing and Area Development Act, 1976 — Section 66, 70

Citation : (1994) 3 BomCR 159

Hon'ble Judges : A.V. Savant, J

Bench : Single Bench

Advocate : H.L. Gokhale, for the Appellant; S.G. Surana, for respondent Nos. 1 and 2 and R.V. Bagve, for the Respondent

Judgement

A.V. Savant, J.—Heard all the learned Counsel at length viz. Shri Gokhale for the petitioner, Shri Surana for respondents Nos. 1 and 2 and Smt. Bagve for respondent No. 3.

2. This Review Petition discloses a very sorry state of affairs and a totally arbitrary conduct on the part of the officers of the first respondent Maharashtra Housing & Area Development) Authority (for short, the first respondent Authority). What makes it worse is that despite this Review Petition having been admitted as far back as on the 24th June 1992 and despite the petitioner having made allegations of malafides and fraud on the part of the officers of the first respondent, no care has been taken to file an elaborate affidavit at least denying the said allegations. As would be evident from the facts set out hereinafter, the first respondent Authority has filed a cryptic affidavit of its Assistant Estate Manager on 23rd March 1993. It only deals with the question as to whether review can be entertained. Beyond the two-page affidavit dealing with the question of review, there is no denial of the allegations of mala fides, fraud and personal interest on the part of the officers of the said Authority. Similar is the case of the affidavit filed by the 3rd respondent who seems to have presumed

the officers of the 1st respondent to allot the premises to him without there being even a writing or any document finalising the terms of allotment. At the end of the hearing after over a day, none of the two Counsel appearing for the respondents could tell me the basis on which the officers of the first respondent have allotted the premises to the 3rd respondent. No document is produced. There is no document of transfer, sale, gift or licence shown to me. The whole thing is absolutely vague and smacks of total arbitrariness on the part of the concerned officers of the first respondent.

3. The facts are as under. This is a Review Petition seeking a review of my order dated 18th January 1991, by which I had dismissed Writ Petition No. 3673 of 1990 filed by the petitioner observing as under:---

"By consent, restored and taken up for admission. Pursued the G.R. dated 5th April 1979 and the Judgment dated 29-8-1990 in W.P. No. 401/1983 and other companion W.Ps. The petitioner has already moved the Government and has obtained stay says Mr. Balkrishnan. Dismissed."

The petition is for the review of the above order dated 18th January 1991 and for further prayers, including an order to direct the first respondent to hand over possession of the tenement in dispute viz. tenement No. 959 in Building No. 27, at Subhash Nagar, Chembur, Bombay back to the petitioner. Upon hearing the Counsel for both sides, the Review Petition was admitted on 24th June 1992 and both sides were directed to maintain status quo in respect of the premises as of that date. The Review Petition has now been heard finally.

4. Reverting to Writ Petition No. 3673 of 1990, it was filed by the petitioner seeking to challenge the orders of the Competent Authority under the M.H.A.D. Act directing eviction of the petitioner. The initial eviction order was passed on the 18th September 1989. Under the said order, the original allottee viz. P.R. Barreto, who was the father of the 3rd respondent Frudy Barrato, was ordered to be evicted. He was the petitioner, who was found in possession of the premises. Against the said order dated 18th September 1989 passed by the Competent Authority, two appeals were filed before the appellate officer, one by the petitioner and the other by F.R. Barreto. Both the appeals were dismissed on 14th September 1990. A finding was recorded that though the premises were allotted to the said P.R. Barreto in his capacity as an employee of an Oil Refinery, they were found to be sublet to the petitioner. F.R. Barreto had shifted to an ownership flat in Twinkle Star Co-operative Housing Society, at Chembur. The original allottee Barreto and the present petitioner were total strangers. It is nobody's case that they were related to each other. It is obvious that some consideration must have passed from the petitioner to the original allottee. It is most unlikely that in a city like Bombay, where there is an acute shortage of accommodation, a person who gets an allotment of the premises, because of his belonging to a special category of an employee of the Oil Refinery, will transfer the same to a total stranger without having charged some consideration therefor.

5. Be that as it may, when the first respondent Authority conducted an inquiry, it transpired that the petitioner was in actual physical possession and Barreto family had shifted to their ownership flat. It is stated at the bar that the area of the premises in dispute is around 180 sq.ft. It is a one-room kitchen tenement, whereas Barreto family has shifted to an ownership flat which is said to be measuring 450 sq.ft. The original allottee F.R. Barreto retired on the 1st April 1988. He expired on the 4th April 1991. His widow and other heirs are staying in the ownership flat in the Twinkle Star Co-operative Housing Society. Only one of his heirs viz. respondent No. 3 is claiming to get the premises in dispute back from the first respondent totally ignoring the claims of the petitioner as per the revised policy of the first respondent. The first respondent authority has readily obliged respondent No. 3 without even giving a show-cause notice to the petitioner and behind his back the premises have to been allotted only to respondent No. 3. No one knows on what basis and on what terms the said premises are allotted. Despite repeated queries to both the learned Counsel appearing on behalf of the respondents, they frankly and fairly expressed their inability to indicate the nature of the rights and liabilities of the 3rd respondent in respect of the premises in dispute.

6. Against the concurrent findings recorded by the two authorities under the M.H.A.D. Act directing eviction of both the original allottee Barreto and the petitioner Mahabaleshwar, Barreto did not file any writ petition and accepted the orders as final and binding. Mahabaleshwar filed Writ Petition No. 3673 of 1990 in this Court. Reliance was placed on the policy Circular viz. Government Resolution dated 5th April 1979. The preamble to the resolution sets out the details of the subsidised housing scheme formulated by the Government of India for the economically weaker section of the community and the industrial workers. The preamble sets out that the implementation of the said scheme had presented intractable problems. A Conference of Housing Ministers of all the States was held in Calcutta in December 1975 and they had recommended to the Government of India to consider the question of transfer of these tenements to the occupants on ownership basis. It was proposed to transfer the tenements as per the guidelines laid down in paras 3 and 4 of the said Resolution. Para 4 in the said Resolution reads as under:

"4. Based on the conditions laid down by the Government of India, the State Government is pleased to direct that tenements constructed by the Ex-Housing Board and other Agencies under Housing Development should be sold to both the authorised and unauthorised occupants for residential purpose on outright sale or in hire purchase basis on the following terms and conditions".

The words "Authorised and Unauthorised occupants" have been defined in Para 7 of the Resolution which reads as under:---

"7. Authorised and Unauthorised occupants: (a) The terms "authorised occupant" would include regular original allottees and (b) their legal heirs or relatives whose names are included in the original application forms irrespective of their

ceasing to be eligible industrial workers or persons belonging to economically weaker section due to exceeding the Income limit of Rs. 350/- p.m.

The "unauthorised occupants" are those who are purely outsiders and are not regular allottees of tenements are not legal heirs, relatives of the regular original allottees whose names were not included in the original application forms for allotment of the tenements. The guiding test would be whether their entry into the tenements was unauthorised or not".

7. It is necessary to state a brief back ground of the construction of tenements. The Bharat Petroleum Corporation is a Company which is the successor-in-interest of two former concerns carrying on business under the name and style of (i) Anglo Taxon Petroleum Company, and (ii) Burma Oil Company. Since they wanted to go into the business of refining petroleum products, they started a Refinery. A large labour force was required which was to be housed in and around Bombay. On 15th December 1951 some letters were exchanged between the said two Companies, the Government of India and the Government of Bombay. Under the arrangement arrived at between the two Companies and the Governments of India and Bombay, the Oil Companies were to pay to the Government of the State of Bombay a sum of Rs. 40 lakhs, which was the cost for providing funds for additional houses. The State Government was to get the houses constructed and have colonies situated within an area of five miles of the Refinery. These houses were to be allotted to the workers of the Refinery on a priority basis. 500 houses were placed at the disposal of the successor Company Bharat Petroleum Corporation, which were to be allotted to its workmen on appropriate terms and conditions. The premises in dispute form part of the said Colony, at Chembur. I need not go into the details of the policy circular at this stage. Suffice it to say that the petitioner placed reliance on this Policy Circular claiming allotment of the premises to him on the ground that even assuming that he was an unauthorised occupant of the said premises, having regard to the policy spelt out in para 4 of the said Government Resolution dated 5th April 1979 (Exhibit "C" page 27 of the Review Petition) he was entitled to claim the allotment.

8. However, at the stage of admission of Writ Petition No. 3673 of 1990, my attention was invited to a Judgment delivered by my learned brother Daud, J., on August 29, 1990 in Writ Petition No. 401 of 1983 and several other Companion Writ Petitions. The learned Judge was called upon also to consider the Government Resolution dated 5th April 1979. The petitioners-before Daud, J. consisted of some of the original allottees, who claimed to be authorised occupants, as also some outsiders who claimed to be unauthorised occupants. Daud, J., took the view that despite the Government Resolution dated 5th April 1979, the allottees and the transfers figuring in the Petitions before him were not entitled to claim purchase under the Government Resolution dated 5th April 1979. On a breach of conditions of initial allotment by the original allottee, the premises would revert to the State Government. In this view of the matter, the

learned Single Judge dismissed the entire batch of Writ Petitions. It was in this background that I passed the Order on 18th January 1991 dismissing the Writ Petition which order has been quoted above. My attention was also invited to the fact that the petitioner had moved the State Government and was claiming regularisation. It must be mentioned at this stage that right from 26th September 1980 till 23rd November 1990 the petitioner has been making applications seeking regularisation of his occupation of the premises in dispute. The petitioner's application dated 26th September 1980 was, however, rejected on 6th January 1991, which letter is at Exhibit "I" Page 76 of the Review Petition and his application dated 23rd November 1990 is at Exhibit "J" Page 77 of the Review Petition.

9. The result of the dismissal of the Writ Petition No. 3673 of 1990 was that the order of eviction passed by the Appellate Officer on 14th September 1990 against both the original allottee viz. Barreto and the petitioner, was confirmed. Barreto did not pursue the matter, either before the State Government or in this Court. He accepted the orders as final and binding may be, because he was comfortably housed in the ownership flat in the Twinkle State Co-operative Housing Society. The petitioner, however, did pursue the matter, both with the Government, as is evident from his application dated 23rd November 1990 at Exh. "J", as also in this Court by filing Writ Petition No. 3673 of 1990. Both, Respondent No. 1 Authority and the 2nd Respondent State Government were, therefore, aware of the fact that the petitioner was pursuing his plea for regularisation which was pending.

10. As stated earlier, Justice Daud heard a batch of petitions which consisted of some of the original allottees as also their transferees. His Order is dated August 29, 1990. Relying upon the said order, I dismissed the petitioner's Writ Petition on 18th January 1991. However, between the date of the delivery of the Judgment by Justice Daud viz. August 29, 1990 and the date of my dismissing the Writ Petition viz. 18th January 1991, the first two respondents revised their policy. A letter has been issued on September 20, 1990 which is at Exhibit "E"-page 67. It says that the State Government had made available to Bharat Petroleum Corporation certain lands for construction of service quarters for the employees. The said Corporation had given its consent to give up the rights over the tenements constructed for its employees at Subhash Nagar and, therefore, the State Government had accorded sanction to sell the same on ownership basis to these 664 tenants or occupants on "as is basis" as per the present policy of the Government. This was stated to be in addition to the amount of Rs. 40 lakhs received by the Government from the Oil Companies. Another letter dated 9th October 1990, which is at Exhibit "P" at page 69, was issued by the first respondent. It confirms that the orders of the State Government regarding the transfer of 664 tenements in the colonies of the first respondent from Bharat Petroleum Corporation to the employees/occupants have been received and action to implement the government orders will be taken up soon. Exhibit "E" dated 20th September 1990 is a letter from the Under Secretary to the

Government of Maharashtra addressed to the Vice-Chairman and Chief Officer of the first respondent Authority. Exhibit "F" dated 9th October 1990 is a letter issued by the Deputy Chief Officer of the first respondent Authority to a former M.L.A. and the President of the Chembur Citizen's Welfare Association. These two documents make it abundantly clear that despite having paid Rs. 40/- lakhs to the State Government, Bharat Petroleum Corporation surrendered its right in respect of the tenements which were placed at its disposal for allotment to its employees and permitted the State Government to deal with the said premises, including the sale of the premises either to the allottees or to the occupants. A news item appeared in a local newspaper on March 20, 1992. The existence of these two documents at Exhibits "E" & "F" was a fact unknown to the petitioner. This was a fact specially within the knowledge of the first two respondents viz. the Housing Authority and the State Government. None of them pointed out the said fact to me on 18th January 1991 and I proceeded on the footing that the Judgment of this Court delivered by Daud, J., on August 29, 1990 was final and was accepted and acted upon by the respondents Nos. 1 and 2.

11. It, however, transpired that none of these persons who had come to this Court and whose petitions were dismissed by Daud, J., on August 29, 1990 were dispossessed because there was a change of policy, as is evident from the two letters : Exhibit "E"-dated September 20, 1990 and Exhibit "F" dated October 9, 1990. These two events indicating a change in the thinking of the Government and the first respondent authority occurred after the Judgment was delivered by Daud, J., on August 29, 1990 since Exhibit "E"-is issued on September 20, 1990 and Exhibit "F" is issued on October 9, 1990. On the basis of these two events reflected in Exhibit "E" and Exhibit "F", Shri Gokhale for the petitioner contended that my order dismissing the Writ Petition on 18th January 1991 needed to be reviewed. Counsel contended that these were matters which were not at all within the petitioner's knowledge. Those were matters specially within the knowledge of the first two respondents viz. the Housing Authority and the State Government. Despite the exercise of due diligence, these two events were not known to the petitioner and hence he could not have produced these two documents on 18th January 1991 when his petition was summarily rejected. These two documents constitute discovery of new and important matters, which have a direct bearing on the issue involved in the petition viz. the petitioner's right to purchase the said tenement in accordance with the policy circular dated 5th April 1979 as modified and amended by the letters - Exhibit "K" dated September 20, 1990 and Exhibit "F" dated October 9, 1990.

12. Shri Gokhale then invited my attention to the averments in the Review Petition. In Para 5 of the Review Petition, it has been alleged as under :---

"The petitioner submits that as public authorities, fairness was expected from the Respondents which they did not show at all at the time of hearing of Writ Petition No. 3673 of 1990. Not only that, but their subsequent conduct in singling out the petitioner for dispossession while continuing to retain other petitioners from Writ

Petition No. 401 of 1983 and others in their tenements clearly showed their discrimination."

It has been further alleged in Para 5 as under :---

"What followed thereafter was worst and which can only happen when somebody has a malafide and personal interest. After dispossessing the petitioner, it appears that the wife and son of Shri P.R. Barreto (now deceased) are being allowed to occupy the tenement No. 959 which they had vacated, even according to them, in favour of petitioner as early as in 1987."

Counsel further invited my attention to the fact that the petitioner has alleged that fraud was practised upon him. This allegation is made in Para 11 of the Review Petition at Pages 8 and 9 as under :---

"It is only after the news at Exhibit "G" appeared in press on 20-3-1992 that some occupants from the (Burma) Shell Colony made available to the petitioner, the letters exhibits at Exhibit "E" and "F" some times in third week of March 1992, when the Petitioner realised that a fraud had been practiced on him. In no case the family of Barreto could be put in possession. There is an eviction order against them and they have not challenged it. As against that, at the material time of policy change, the Petitioner was in possession and entitled to regularisation, but to-day he is on streets."

13. Shri Gokhale then invited my attention to the fact that right from 1980 the petitioner has been praying for regularisation. He invited my attention to the letter at Exhibit "I" dated 6th January 1981 rejecting the petitioner's request for regularisation and/or transfer of tenancy on the ground that the tenement was reserved for Oil Refinery (Burmah Shell reserved quota). Despite this, Counsel contends that the petitioners persisted with his request for regularisation as is evident from the letter at Exhibit "J" dated 23rd November 1990. Counsel placed heavy reliance on the subsequent change in the policy of the first two respondents which is clearly reflected in the two letters at Exhibit "E" dated September 20, 1990 and at Exhibit "F" dated October 10, 1990. He invited my attention to the original policy circular viz. the Government Resolution dated 5th April, 1979. Relying upon Para 4 of the said Government Resolution, which has been reproduced above in para 6, Counsel contended that even if the petitioner was an unauthorised occupant and was in possession, he was still entitled to allotment of the premises. He made grievance of the fact that the petitioner was singled out for dispossession and was thrown out of possession on 6th June, 1991 after his Writ Petition was dismissed on 18th January 1991. What happened thereafter is a strange event with which I will deal in the later part of this Judgment.

14. Shri Gokhale has invited my attention to the provisions of section 114 of the CPC read with Order 47(1) and he contended that this was a fit case for exercise of the powers of this Court so as to advance the interests of justice. He made a very serious grievance of the fact that the Counsel appearing for the first two

respondents had suppressed the relevant documents at Exhibits "E" and "P" when the Writ Petition was dismissed. My attention was invited by Shri Gokhale to the recent decision of the Supreme Court in the case of S. Nagaraj & others v. State of Maharashtra and another, Judgment To-day 1993(4) S.C. 27, dealing with the exercise of power of review with a view to doing substantial justice between the parties. The Supreme Court observed that if the order was passed under a mistake, it should not prejudice the interests of a party. Indeed, the power should be exercised to prevent miscarriage of justice and technicalities apart, if the Court was satisfied of the injustice, then it was its constitutional and legal obligation to set it right by recalling its order. To quote the exact words of the Supreme Court, it has been observed in Para 18 of the Judgment at pages 46 and 47 as under :---

"18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before Justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice, then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order".

15. Shri Gokhale also invited my attention to another decision of the Supreme Court in the case of A.C. Estates Vs. Serajuddin and Co. and Another, . Relying upon the observations in Para 10 of the Judgment at page 939 of the Report, Counsel contended that these documents at Exhs. "E" and "F" existed at the date of dismissal of the Writ Petition viz. on 18th January, 1991. He is not pleading any event subsequent to the dismissal of the Writ Petition on 18th January, 1991, but what he is pleading is the existence of certain facts viz. Exhibit "E" dated September 20, 1990 and Exhibit "F" dated October 9, 1990 which was not within his knowledge despite the exercise of due diligence. In fact, he repeatedly regretted that the Counsel appearing for the respondents kept this Court in dark about the policy change.

16. As against this, Shri Surana appearing for the first two respondents relied upon the cryptic two page affidavit of the Assistant Estate Manager of the first respondent Authority. As stated earlier, there is no denial of the allegations of fraud, discrimination, malafides and personal interests. All that is stated is that

there was no discovery of new and important evidence after the passing of the Order dated 18th January, 1991. Para 3 of the said affidavit says that there was no discovery of any new and important evidence after the order dated 18th January, 1991. In para 4 it is stated that the petitioner had not pointed out that he had acted with due diligence and that the existence of the said document was never within his knowledge. It is difficult to appreciate the stand taken in the said affidavit. The petitioner has categorically stated in Para 11 of the Review Petition quoted above that he came to know of these circulars only in the third week of March 1992 when he came across the news item, a copy of which is annexed at Exhibit "G", page 70. The petitioner was thrown on the street on the 6th January, 1991. It appears that he was the only one singled out for such discriminatory treatment. There was a change in the policy which admittedly enabled all the persons similarly situated like the petitioner, to continue in the premises. However, the petitioner had no access to know the change of policy, which was a fact specially within the knowledge of the first two respondents.

17. After attempting for some time to justify the conduct of the first two respondents is not disclosing this material at the time of hearing of the Writ Petition on 18th January, 1991, Shri Surana realised that it was not possible to defend the conduct of the first two respondents. He realised that this was a fact which was specially within the knowledge of the first two respondents and, in fairness to the Court, it ought to have been pointed out to the Court on 18th January, 1991. Shri Surana, therefore, fairly stated that it would be difficult to oppose the prayer for Review in the peculiar facts and circumstances of this case. The authenticity and/or correctness of the change in the policy as reflected in the two letters at Exhibit "E"- dated September 20, 1990 and Exhibit "F"- dated October 9, 1990 was not doubted. As stated earlier, these two events occurred after the judgment was delivered by Daud, J., on August 29, 1990 and before I dismissed the petitioner's Writ Petition on 18th January, 1991 are not subsequent to my passing the order. The event of change of policy was the event before my passing the order, though it was subsequent to the passing of the order by Daud, J., and it ought to have been brought to the notice of this Court on 18th January, 1991 by either of the two respondents Nos. 1 and 2. When this position was clear from the record, Shri Surana fairly did not pursue the matter further.

18. Smt. Bagave appearing for the 3rd respondent initially tried to oppose the application for review contending that the Government Resolution dated 5th April 1979 was not applicable to the petitioner's case and in view of the Judgment of Daud, J., the petitioner could not claim any right on the basis of the said G.R. dated 5th April, 1979. Smt. Bagave also, very fairly, did not dispute the authenticity or the correctness of the two documents at Exhibits "E" and "F". The affidavit filed by the 3rd respondent is more on the merits of the entire dispute of either the Barreto family or the petitioner getting the premises with which I am not concerned at this stage. It must be stated in fairness to both Shri Surana and Smt. Bagave that ultimately they did not dispute Shri Gokhale's contention that

this was a fit case for the exercise of the powers of review.

19. Accordingly, on the material that is now place before me, I am of the view that the order of dismissal dated 18th January 1991 passed in Writ Petition No. 3673 of 1992 needs to be reviewed and set aside. The said order is, therefore, set aside. Writ Petition No. 3673 of 1990 is restored and \\Rule is issued in the said Writ Petition. This will be in accordance with prayer (a) of the Review Petition.

20. Shri Gokhale has, however, strenuously urged that he is also entitled to relief in terms of prayer (b) of the Review Petition. Having regard to the peculiar facts and circumstances of this case and particularly, the wholly arbitrary conduct on the part of the first respondent authority, he contends that interests of justice require that pending Writ Petition No. 3673 of 1990 the petitioner should be put in possession of the said tenement No. 959. Needless to say that both Shri Surana and Smt. Bagave opposed this prayer. Hence, it has become necessary for me to consider this prayer in some details.

21. As stated earlier, the premises were allotted to F.R. Barreto in his capacity as an employee of the Bharat Petroleum Corporation. This was pursuant to the arrangement arrived at between the Government of India, Government of Bombay and the Bharat Petroleum Corporation. As a result of this, the Petroleum Company paid Rs. 40 lakhs to the State Government, which provided 500 tenements for housing the employees of the Bharat Petroleum Corporation. Barreto having obtained the allotment, which was clearly by virtue of his being an employee of the Petroleum Company, appears to have indulged in an unauthorised transfer of the premises to the petitioner. As already stated above, it is impossible to believe that anyone will transfer the premises in Bombay without any consideration. The findings by the appellate officer while confirming the order of eviction are that the Barreto family had shifted to their bigger ownership flat in Twinkle Star Co-operative Housing Society, at Chembur. Obviously, they were not content with the one-room tenement. The initial eviction order dated 18th September, 1989 was passed against F.R. Barreto on the ground that he had unauthorisedly sublet the premises and/or transferred the same to the petitioner. Both Barreto and the petitioner were ordered to be evicted. It is true that both of them filed appeals against the order of the eviction and both the appeals were dismissed on 14th September, 1990.

22. It is, however, interesting to note that Barreto did not pursue the matter further, either with the Government or in this Court. The petitioner had no other alternative but to persist with his request to the state Government to regularise his occupation or transfer. He was pursuing the matter from September 1980, as is evident from Exhibit "I" till 23rd November 1990, as reflected in Exhibit "J". He filed Writ Petition in this Court around December 1990 and the Petition was dismissed on 18th January 1991. Both respondents Nos. 1 and 2 were aware of the change in the policy of the government and the sale of the premises to the occupants, including the unauthorised occupants like the petitioner. Even the

Government Resolution dated 5th April 1979 contemplated the sale or transfer in favour of unauthorised occupants like the petitioner. This is clear from Paras 4 and 7 of the said Government Resolution, which paras have been quoted above in Para 6. If that was not clear and assuming that the said G.R. dated 5th April, 1979 did not find favour with this Court, there was a change of policy which was clearly reflected in Exhibit "E" dated September 20, 1990 and Exhibit "G" dated October 9, 1990. Respondents Nos. 1 and 2 knew that the petitioner had approached the High Court and at the same time the State Government. There were more than 50 writ petitions, which were disposed of by Daud, J., by his common Judgment and Order dated August 29, 1990. Possession of none of these persons was disturbed. They appear to have continued their possession. The petitioner was singled out for dispossession. He has alleged fraud, malafides, personal interests and discrimination against the officers of the first respondent. These allegations are not even denied. The petitioner was thrown out on the streets on the 6th June, 1991.

23. The original allottee F.R. Barreto expired on the 4th April, 1991. He had retired on the 1st April, 1988. He has left behind a widow and children. Without giving any notice of hearing to the petitioner, whose application at Exhibit "J" dated 23rd November, 1990 was pending with the Government, the Chief Officer of the first respondent has passed a cryptic order on an application made by one of the heirs of deceased Barreto viz. by the present respondent No. 3. The application dated 7th February, 1992 by respondent No. 3 states that his father was the employee of the Bharat Petroleum Corporation and was the original tenant and that having regard to the change in the policy, the tenement should be allotted to him. The application is made on 7th February, 1992 and within the short span of 30 days, on 6th March, 1992, the following order has been passed:

"Kindly hand over possession to the family of O.T. by recovering loss of revenue and incidental charges.

Sd/- Illegible 6/3/92"

When I asked Shri Surana as to whether any notice to show cause was issued to the petitioner whose application was pending with the first respondent authority, he called the officer of the first respondent, went through the files and frankly stated that no notice was issued to the petitioner. Having regard to the peculiar facts and circumstances of this case, a notice ought to have been issued to the petitioner. It is not clear as to how the Chief Officer of the first respondent Authority chooses one of the many heirs of the deceased allottee ignoring the claims of the person who was found in possession on the date of the passing of the order of eviction that is to say 18th September 1989, which order was confirmed in Appeal on 14th November 1990. Admittedly, the possession of the premises was obtained in June 1991 by dispossessing the petitioner and not any member of the Barreto family. Barreto family had shifted long back to their ownership Flat in Chembur and was apparently not interested in this one room tenement which they had transferred to the petitioner. It is not even suggested

that the parties are related. The transfer by Barreto to the petitioner must have, therefore, been for some consideration. The petitioner was virtually thrown on the streets, in the sense that he is staying at the mercy of some of his relatives and has to share some accommodation with a relative of his. Having regard to the policy circular, as amended, the petitioners was entitled to allotment even in his capacity as an unauthorised occupant in the facts and circumstances of this case.

24. Realising that the allotment to the 3rd respondent-one of the heirs of deceased Barreto, was somewhat unusual, Shri Surana tried to find out the terms and conditions on which allotment was made. Shri Surana took instructions from the Officer of the first respondent authority, went through the files produced in the Court and frankly stated that it was not possible to ascertain as to on what basis the allotment was made to the 3rd respondent, as to whether the allotment was an outright sale, tenancy or on licence. If so, on what terms ? Nothing is clear. No documents were available to answer these queries. This assumes importance in the light of the allegations of malafides, personal interest, fraud and discrimination, which allegations have been made in the Review Petition and which are quoted above.

25. It was in these facts that Shri Gokhale has invited my attention to the Supreme Court decision in the case of Dorab Cawasji Warden Vs. Coomi Sorab Warden and others, . Reliance is placed on the observations made in Paras 13 and 14 of the Judgment where the Supreme Court has reviewed the entire law. After discussing the legal position in other countries, the Supreme Court has reviewed the law in India. In Para 14 it has been observed as under :--

"14. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-content status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.,

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief."

Applying the above ratio, I am of the view that that the petitioner has made out a strong prima facie case in the Writ Petition which now stands admitted as a result of the review application being allowed. Having regard to the Government Resolution dated 5th April 1989 and the subsequent change in the policy as reflected in Exhibit "E"-September 20, 1990 and Exhibit "F"-October 9, 1990, prima facie, the petitioner will be entitled to claim the transfer of the premises in his favour. If all the order persons whose petitions were dismissed by this Court were protected as a result of the change of policy, singling out the petitioner for dispossession, ex-facie. appears to be malafide and is obviously discriminatory. In this view of the matter, the petitioner will be clearly entitled to the grant of mandatory injunction in terms of prayer (b) of the Review Application. That would be the interim relief pending the Writ Petition, which now stands restored and admitted.

26. I have already referred to the recent Supreme Court decision in the case of S. Nagaraj and others v. State of Karnataka and another, in Para 14 above. Relying upon the observations in Para 18 of the said decision at pages 46 and 47 of the Report, I am of the view that the dismissal of the Writ Petition on 18th January, 1991 was as a result of the failure on the part of the first two respondents to place the correct facts before me. The dispossession of the petitioner on 6th June, 1991 was consequent upon the petition being dismissed on 18th January, 1991. The subsequent allotment to the 3rd respondent is wholly arbitrary and it is not clear as to what are the terms of the allotment. At any rate, the mere fact that the 3rd respondent has been subsequently allotted the premises cannot stand in the way of passing an interim order in the peculiar facts and circumstances of the case when the petitioner has made out a strong prima facie case and equity lies in his favour. There is no balance of convenience in favour of the 3rd respondent and it entirely lies in favour of the petitioner.

27. As stated earlier, I do not find any merit in the contentions of Shri Surana and Smt. Bagave on the question of passing the above interim order. In view of the observations of the Supreme Court in Dorab Cawasji Warden's case (supra) and in the case of S. Nagaraj (supra), the petitioner is entitled to relief in terms of prayer (b). Hence, the following order:-

- (i) Rule in Review Petition No. 7 of 1992 is made absolute in terms of prayer (a);
- (ii) The order dated 18th January 1991 dismissing Writ Petition No. 3673 of 1990 is set aside. Rule is issued in the said Writ Petition. It should be placed for final hearing in due course;
- (iii) Rule in Review Petition is also made absolute in terms of prayer (b) and pending the hearing and final disposal of Writ Petition No. 3673 of 1990, it is ordered that possession of the tenement in dispute bearing No. 959 in Building No. 27, at Subhashnagar, Chembur, should be restored to the petitioner on or before Monday, the 5th November 1993;
- (iv) The first respondent will obtain possession of the tenement from the 3rd

respondent and hand it over to the petitioner on or before Monday, the 8th November 1993.

(v) Rule is made absolute accordingly.

28. As far as costs are concerned, Shri Gokhale insists on costs being awarded to the petitioner, which should be paid by the first two respondents. He is not pressing for costs against the 3rd respondent. His grievance is that the whole affair smacks of malafides on the part of the officers of the first respondent Authority. Had the correct facts been placed before the Court on 18th January, 1991, Writ Petition No. 3673 of 1990 would not have been dismissed. Bearing in mind the Supreme Court's observations in S. Nagaraj's case quoted above, I think this is a fit case where the first two respondents should be ordered to pay costs of Rs. 250/- each to the petitioner. There is no order of costs against the 3rd respondent.

29. Shri Gokhale, however, fairly stated that despite the above orders in his favour in the pending Writ Petition No. 3673 of 1990, if the first respondent Authority, which has a number of premises at its disposal, is inclined to allot the petitioner's a suitable alternate accommodation, he is willing to accept the same. If, therefore, the first respondent Authority allots any suitable alternate accommodation to the petitioner by the end of this month, the order directing dispossession of the 3rd respondent and restoring the possession to the petitioner need not be implemented. In the peculiar facts and circumstances of this case, the first respondent authority may well consider if it can put an end to this affair by allotting a suitable alternate accommodation to the petitioner before the end of this month.

30. Certified copy, if applied for, to be issued expeditiously.

Rule made absolute.