

(2002) 01 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No. 1840 of 1988

Shreeprakash Shivram Poddar

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 29-01-2002

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12(3), 13(1)
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 36, Order 21 Rule 86, 82, 9
Constitution of India, 1950 — Article 226, 227
Limitation Act, 1963 — Article 181

Citation : (2002) 3 ALLMR 124 : (2002) 3 BomCR 655

Hon'ble Judges : P.S. Patankar, J;D.B. Bhosale, J

Bench : Division Bench

Advocate : P.R. Diwan and V.J. Shah, instructed by L.C. Tolat, for the Appellant; R.J. Mane, for Respondent No. 1, R.D. Dhanuka and Aruna Savla for respondent No. 2, M.D. Angal, for Respondent Nos. 3 to 6, S.G. Deshpande, for Respondent Nos. 7 to 10, S.G. Godbole, for Respondent Nos. 11 to 15, N.V. Walawalkar, instructed by G.S. Godbole, for Respondent Nos. 16 to 19, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Bhosale, J.—The petitioner, by means of this writ petition filed under Article 226 of the Constitution of India, seeks direction or order calling upon the respondents to forthwith hand over quite, vacant and peaceful possession of the flats referred to in Exhibit-I to the petition. The petitioner has also sought a declaration that the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, the Bombay Land Requisition Act and the Bombay Government Premises (Eviction) (Amendment) Act, 1996 (the Maharashtra Act XVI of 1997) and/or the Ordinance dated 25th December, 1997, published in the Maharashtra Government Gazette, Extraordinary dated 26th December, 1997, are ultra vires unconstitutional and violative of fundamental rights of the petitioner guaranteed under the Constitution of India. Though the petitioner has prayed for the declaration of the aforesaid provisions unconstitutional, the

learned Counsel for the petitioner did not press this prayer. However, we may note that the said provisions have already been declared ultra vires and unconstitutional by this Court in the case of *Ranjit P. Gohil v. State of Maharashtra*, reported in 1998 (4) Mh.L.J. 513.

2. Initially, the present petition was filed only against respondent Nos. 1 and 2. The rest of the respondents are arrayed as party respondents pursuant to the orders of this Court passed in the Chamber Summons taken out for amendment to the petition.

3. The petitioner is the President of Akhil Bharat Varshiya Marwari Agarwal Jatiya Kosh, a society registered under the Societies Registration Act, 1860 and also under the Bombay Public Trusts Act, 1950, for short, "Society"). The society owns lands and buildings, bearing cadastral Survey Nos. 691-698/10 of Matunga Division, outside the Fort of Bombay and known as "Agarwal Nagar". Respondent No. 1 is the State of Maharashtra and respondent No. 2 is the Commissioner of Municipal Corporation of Greater Bombay, a statutory corporation constituted under the provisions of the Bombay Municipal Corporation Act, 1888. Respondent Nos. 3 to 19 are occupants of different flats in two different buildings owned by the society.

4. Now before we consider the challenge made, it would be perhaps better to state briefly what the case of the petitioner is and what are the grounds for this petition.

The Collector of Bombay, by an order dated 28th March, 1942, in exercise of the powers under Rules 76 and 79 of the Defence of India Rules read with the Government of India, Defence Co-ordination Department, Notification No. 824/OR/41 dated 4th October, 1943, requisitioned some building premises and land appurtenant thereto owned by the petitioner-society. The society complied with the said order and delivered vacant possession of the five buildings consisting of several flats and six garages to respondent No. 2. Respondent No. 2, in turn, gave possession of the said buildings and garages to various employees of the corporation. Admittedly, between March, 1942 to June 1945, some of the requisitioned premises were derequisitioned from time to time and possession thereof was handed over to the petitioner/society.

By an order dated 26th August, 1946, the Collector of Bombay derequisitioned all the remaining requisitioned premises with effect from 31st August, 1946. In the result, no requisitioned order remained operative in respect of the premises owned by the society, after 31st August, 1946. By an order dated 26th August, 1946, passed by the Government of Bombay, in exercise of powers conferred by Sub-Rule (2) of Rule 81 of the Defence of India Rules, the society was directed to let the requisitioned premises as on 26th August, 1946 to respondent No. 2 with effect from the date on which the requisition order issued in respect of the premises was withdrawn, i.e. 31st August, 1946. It appears that in view of the said order, respondent No. 2 continued in possession of some premises owned by

the society. The petitioner, therefore, instituted a suit in this Court, being Suit No. 2121 of 1947 against respondent No. 2, inter alia for a decree of possession of the suit premises and for compensation. The suit was dismissed by the learned Single Judge of this Court on 22nd February, 1951. The petitioner, thereafter, filed an appeal, being Appeal No. 38 of 1951 in this Court which came to be allowed by consent on 29th February, 1952. (The said consent order dated 29th February, 1952 will be hereinafter referred to as "the said consent decree"). In the consent order, an undertaking of the respondent No. 2, to hand over possession of all premises in their possession to the petitioner on or before 28th February, 1953, was recorded by this Court. (The said undertaking will be hereinafter referred to as "the undertaking").

The petition further discloses that respondent No. 2 filed suit in the Small Causes Court against its employees who were in occupation of the premises, which respondent No. 2 had undertaken to hand over to the petitioner by the order dated 29th February, 1952. The said Suit No. 13268 of 1952 filed in the Small Causes Court was dismissed on 17th February, 1952. According to the petitioner, in compliance with the undertaking, respondent No. 2 handed over possession of seven flats and garages and promised to release remaining 17 flats now in possession of respondent Nos. 3 to 19. (The said 17 flats will be hereinafter referred to as "the said flats").

Between 1952 to 1977, there were no movements between the parties. On 4th August, 1977, respondent No. 2 issued a letter (Exhibit "J") to the petitioner, inter alia, stating that possession of the remaining 17 flats will be given, provided the petitioner accepts the occupants thereof as their tenants. The said requisition was turned down by the petitioner by its letter dated 1st July, 1978. The petitioner, thereafter, claims to have made several representations to respondent No. 2 to get back possession of the said flats and having failed, filed the instant writ petition. It is a case of the petitioner that the said flats were continued to be treated as under requisition by the respondents. The petitioner, in these circumstances, seeks possession of the said flats in pursuant to the said consent decree and the undertaking of respondent No. 2 recorded therein.

5. The several affidavits have been filed by the nineteen respondents controverting the case set up by the petitioner. Respondent No. 2 has filed two separate affidavits of one Hanumant Kamble, an Administrative Officer in the Estate Department of respondent No. 2. Respondent Nos. 3 to 6 together have filed reply affidavit of respondent No. 6. Respondent Nos. 7 to 10 together have filed their reply affidavit. Similarly, respondents Nos. 11 to 14 have filed two affidavits of respondent No. 11. Respondent Nos. 16 to 19 have filed separate affidavits in reply to the writ petition.

6. In so far as the affidavits filed by respondent No. 2 are concerned, the petition has been opposed, stating that the petitioner is trying to execute a time barred decree dated 29th February, 1952 passed by this Court in Appeal No. 38 of 1951, which cannot be permitted in the writ petition filed under Article 226 of the

Constitution of India. Respondent No. 2 in respect of the undertaking has stated to have made sincere efforts to hand over possession of the said flats to the petitioner. Respondent No. 2, has set up specific case that it was open for the petitioner to execute the said consent decree by taking appropriate proceedings against the tenants within a stipulated time and having failed to do so, the jurisdiction of this Court under Article 226 cannot be invoked. Respondent No. 2 has controverted the case of the petitioner that no tenancy right has been created or deemed to have been created in favour of the respondents.

7. Though, respondent Nos. 3 to 19 have filed several affidavits, the stand taken by them is somewhat similar and even the grounds for opposition are also common. In short, while controverting the case set up by the petitioner, respondent Nos. 3 to 19, have stated that the petitioners ought to have taken steps to recover possession on the basis of the said consent decree in accordance with law and having failed to do so the society deemed to have accepted the occupants as direct tenants and, in any case, has accepted respondent No. 2 as tenant, in the building and the respondents are lawful sub-tenants in such case. Heavy reliance is placed on the order of the Government of Bombay dated 26th August, 1946, under Rule 81 of the Defence of India Rules, 1939, to claim tenancy rights in respect of the said flats (for short "the said Rules"). The respondents have stated that the present remedy under Article 226 of the Constitution cannot be resorted to evict them from the said flats. As far as the said consent decree and the undertaking recorded therein is concerned, it is the case of the respondents that the petitioner ought to have enforced the undertaking within reasonable time and/or ought to have executed the decree obtained against the respondents within limitation and since they have failed to do so, their remedy has been completely time barred. While claiming protection under rent legislation, the respondents have relied on several documents annexed to the affidavits to point out that they have been treated by the petitioner as tenants. As far as the letter dated 4th August, 1977 (Exhibit-J) is concerned respondent Nos. 11 to 14 have alleged collusion between the petitioner and respondent No. 2. In short, respondent Nos. 3 to 19 have resisted the writ petition, claiming protection under the Rent Act and have opposed the prayers, on the ground that after having failed to execute the said consent decree within limitation or got the undertaking recorded therein enforced by adopting contempt proceedings, within time, the petitioner cannot approach, this Court for invocation of extraordinary jurisdiction under Article 226 of the Constitution.

8. Mr. Diwar, learned Counsel appearing for the petitioner, at the outset, submitted that after releasing all premises from the requisition with effect from 31st August, 1946 and in view of the undertaking recorded in the said consent decree the occupation and possession of the said flats by the respondents and/or their nominees is illegal, without justification and authority of law and are, therefore, bound to hand over the vacant and peaceful possession thereof to the petitioner. He further submitted that the order of hiring dated 26th August, 1946

under Rule 81(2) of the said Rules, was void, illegal and bad in law and respondent No. 2 was bound to hand over possession after derequisitioning of the said flats. Mr. Diwan placed heavy reliance on the undertaking of respondent No. 2, recorded in the said consent decree and submitted that even if it is assumed that the order of hiring dated 26th August, 1946 was not set aside and/or quashed by the consent decree dated 29th February, 1956 passed by this Court in Appeal No. 38 of 1951, by giving the undertaking, respondent No. 2 is deemed to have agreed to set aside and/or for quashing of the order of hiring and in view thereof the occupation of the said flats by the respondents is illegal, bad in law and unauthorised. It is also contended that the undertaking given by respondent No. 2 is binding and enforceable against the employee, viz. respondent Nos. 3 to 19 and they cannot claim any rights and continue in possession of the said flats. According to Mr. Diwan, respondent Nos. 3 to 19 have failed to produce any documentary evidence in support of their claim as tenants or sub-tenants in the said flats. As far as the undertaking is concerned. Mr. Diwan submitted that its non-compliance is a continuous wrong and the right to enforce such an undertaking does not get barred. In support of his contention, he placed reliance on the decisions of this Court in the cases of *Usman Gani v. State of Maharashtra*, reported in 1993 Mh.L.J. 1331 *Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar, , and Firm Ganpat Ram Rajkumar Vs. Kalu Ram and Others, .* He submitted that, in any event, enforcement of the undertaking is not barred by limitation as powers of this Court are wide, having been derived under Article 215 of the Constitution of India, and are not trammelled by the limitation imposed u/s 20 of the Contempt of Courts Act. Lastly, he submitted that the writ under Article 226 is only efficacious remedy available under the circumstances and ought to be granted in the facts and circumstances of the case.

9. Mr. Dhanuka, learned Counsel for respondent No. 2, per contra, submitted that the petitioner is indirectly seeking to execute the consent decree dated 29th February, 1952 passed by this Court after lapse of 36 years. The remedy of writ cannot be resorted to for execution of time barred decree, only because respondent No. 2 is a public body. In support of this contention, he placed reliance on a decision of the Apex Court in *Mohammed Hanif Vs. The State of Assam, .* He further submitted that the petitioner has not challenged the validity of the order of hiring dated 16th August, 1946 passed under Rule 81(2)(bb)(iii) of the said Rules. According to Mr. Dhanuka, the only remedy open to the petitioner was to seek execution of the said consent decree under Order XXI, Rule 10 of the Code of Civil Procedure, 1908 and having failed to resort to the said remedy, he has lost right to get the decree executed being hopelessly time barred. In so far as the undertaking is concerned, Mr. Dhanuka contended that it was not given to this Court, but it was a part of an agreement between the petitioner and respondent No. 2 and in view thereof the same cannot be enforced. In support of his contention, he placed reliance on the decisions in the cases of *Babu Ram Gupta Vs. Sudhir Bhasin and Another, ; Union of India and*

Another Vs. Kirloskar Pneumatic Company Limited, ; Ahmed R.V. Peermohamed Vs. Jogi S. Bhar and others, ; and Nisha Kanto Roy Chowdhury Vs. Smt. Saroj Bashini Goho, .

10. Mr. Angal, learned Counsel for respondent Nos. 3 to 6 contended that the order of hiring passed under Rule 81(2) of the Rules has never been challenged by the petitioner. He further submitted that there is no violation of right of the petitioner under Article 300-A either by respondent No. 2 or by any other respondents and, therefore, the writ is not maintainable under Article 226 of the Constitution. As far as the undertaking is concerned, Mr. Angal, submitted that the only contempt petition could be filed for the alleged breach of an undertaking. Lastly, he submitted that several disputed questions of fact are involved in the present writ petition and they are highly vexed and cannot be decided in the writ jurisdiction under Article 226. Mr. Deshpande, the learned Counsel for respondent Nos. 7 to 10 adopted the submissions made by Mr. Angal.

11. Mr. Walawalkar, learned Counsel for respondent Nos. 16 to 19, submitted that the remedy of writ petition is not available to enforce a contract particularly when there is no statutory duty imposed on the public body or office and there is no failure on the part of that officer to discharge that obligation. He further submitted that, extra ordinary jurisdiction under Article 226 cannot be converted into execution application. In support of his submission, he placed reliance on the decisions in the cases of Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, ; Kulchinder Singh and Others Vs. Hardayal Singh Brar and Others, and The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others, . He further submitted that the present writ petition suffers from laches and this Court may not entertain such a grossly delayed writ petition, especially when other remedy has become time barred by inaction on the part of the petitioner. In support of this contention he placed reliance on the decisions in the cases of A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another, ; State of Madhya Pradesh Vs. Bhailal Bhai and Others, . Mr. Walawalkar, submitted that the consent decree passed by the Civil Court recording tenant's eviction where the tenants are not parties, is a nullity. He placed reliance on the decision in the case of Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, in support thereof. He invited our attention to the provisions of the Bombay Rents, Hotel Rates and Lodging House Rates Control Act, 1944 and the subsequent rent legislation of 1947 and contended that the respondents are protected under the provisions of the Rent Act and in view thereof the said consent decree is without jurisdiction and is, therefore, nullity and non est. He placed reliance on the decision in the case of Chiranjilal Shrilal Goenka (Deceased) through Lrs. Vs. Jasjit Singh and Others, in support thereof.

Mr. Godbole, learned Counsel for respondent Nos. 11 to 15, though adopted the arguments advanced by Mr. Walwalkar, in addition submitted that in view of the order passed by the Government of Bombay under Rule 81(2)(bb)(iii) of the said

Rules, by which directions were given to the petitioner to let out the said flats to respondent No. 2, the tenancy rights have been created in favour of the respondents. He further submitted that under the said provisions, there is an element of compulsion in hiring the premises of the petitioner and since it was a case of hiring or letting of the premises and not requisitioning of the premises, it was binding on the petitioner irrespective of his like or dislike of the said action. In support of this contention he placed reliance on the decision of this Court in the case of *Ardeshir P. Banaji Vs. Union of India and others*, , wherein this Court has considered Rule 81 of the Defence of India Rules.

12. We heard the learned Counsel appearing for the parties at length, perused the writ petition and affidavits filed by the respective respondents with annexures thereto. The petitioner, at the outset, has prayed for a writ of mandamus or order, calling upon the respondents to forthwith hand over, quite, vacant and peaceful possession of the said flats, solely on the basis of the consent decree passed by this Court on 29th February, 1952 in the appeal filed by the petitioner, bearing Appeal No. 38 of 1951 and the undertaking of respondent No. 2 recorded therein. In other words, the petitioner seeks to enforce the undertaking or to execute the said consent decree by invoking an extra ordinary jurisdiction of this Court under Article 226 of the Constitution. We have, therefore, to consider whether it is possible to invoke extraordinary jurisdiction under Article 226 to grant prayer of the petitioner in the instant petition. Whether the writ petition is liable to be dismissed on the ground that it suffers from laches and gross delay? or whether remedy of writ petition under Article 226 can be invoked for an enforcement of an undertaking recorded in a civil suit/appeal or for execution of the decree passed by the High Court in Civil Appeal?

13. Before we consider the submissions advanced by the learned Counsel for the parties, it would be advantageous to refer, in brief, the circumstances in which the premises came in possession of the respondents. The Collector of Bombay, in exercise of the powers conferred by Rules 76 to 79 of the Rules, read with the Government of India Defence Co-ordination Department No. 823/OR 41 dated 4th October, 1941 requisitioned from 1st May, 1942 the properties mentioned in the scheduled thereto. The premises, which were requisitioned, consist of the said flats in occupation of respondent Nos. 3 to 19. The said flats with seven others flats and two garages came to be released from requisition with effect from 31st August, 1946 by the Collector's office vide their order dated 26th August, 1946. The Government of Bombay, by its order dated 26th August, 1946, in exercise of the powers conferred by sub-rule (2) of Rule 81 of the said Rules directed to let the said flats and other seven flats and two garages to respondent No. 2 with effect from the date on which the requisition order issued in respect of the premises was withdrawn, i.e. 31st August, 1946. The order dated 26th August, 1946 passed under Rule 81 of the Rules reads thus :

"ORDER

Defence of India Rules, Revenue Department, Bombay, Castle,
26th August, 1946.

No. 10255/30/7231-A WHEREAS in the opinion of the Government of Bombay it is necessary for the purpose of maintaining services essential to the life of the community to make the following order. Now therefore, in exercise of the powers conferred by sub-rule (2) of Rule 81 of the Defence of India Rules and of all other powers enabling it in this behalf the Government of Bombay is pleased to direct the Secretary Akhil Bharat Varshiya Marwari Agarwal Jatiya Kosh Nar Narayan Temple Building, Kalbadevi Road, Bombay shall let the blocks Nos. E to 1-E in Building No. 1, Blocks Nos. 1, 3, 4, 6, 8 to 18, 20, 22 and 24 in Building No. 3 Block No. 4 with 4 Garages of said the Building at Agarwal Nagar, Vincent Road C.E. No. 691/698/10 of Matunga Division, Bombay to the Municipal Commissioner for the City of Bombay with effect from the date of the requisition order issued in respect of the premises is withdrawn.

By order of the Governor of Bombay. Sd/- Secretary to the Government,
Bombay, Revenue Department, 26-8-1946.

To,

The Secretary, Akhil Bharat Varshiya Marwari Agarwal Jatiya Kosh, Nar Narayan Temple Building, Kalbadevi Road, Bombay."

14. By virtue of the aforesaid order, respondent No. 2 claims to have continued in possession as tenant. The petitioner, therefore, instituted the suit which ultimately came to be allowed in appeal by consent in which this Court recorded the undertaking of respondent No. 2. In the background of these facts, we would now like to deal with the questions arise for our consideration.

15. At the outset, the question falls for our consideration is that whether the remedy of writ petition under Article 226 of the Constitution of India is available to the petitioner in the facts and circumstances of the case and the possession can be sought of the said flats on the basis of the said decree and the undertaking recorded therein. Respondent No. 2 was under obligation to hand over possession by February, 1953. Respondent No. 2 claims to have made sincere efforts to give effect to the undertaking which includes filing of the suit in 1952 itself in the Small Causes Court against other respondents for eviction and by offering them an alternative premises. The efforts made by respondent No. 2 to hand over possession to the petitioner were also appreciated by the Small Causes Court while dismissing the Suit No. 13268 of 1952 in its judgment and order dated 17th February, 1953. The said suit was dismissed solely on the ground that the plaintiff, viz. respondent No. 2 herein, does not fall u/s 13(g) of the Rent Act, since respondent No. 2 required the premises not for their occupation but for handing it over in compliance of the undertaking. After dismissal of the suit by the Small Causes Court, in 1953, till 1988, i.e. for about 35 years, the petitioner did not take any step to get back the possession of the

said flats either by initiating the execution proceedings or contempt proceedings for an enforcement of the undertaking of respondent No. 2. In our opinion, therefore, the petitioner, by instant petition, is virtually seeking execution of the consent decree passed by this Court on 29th February, 1952 or an enforcement of the undertaking recorded therein.

16. It is apparent from the facts that the decree was passed on 29th February, 1952 and the undertaking of respondent No. 2 was recorded by this Court therein. Respondent No. 2 made efforts within the knowledge of the petitioner in carrying out the undertaking. The petitioner was aware about the dismissal of the suit filed by respondent No. 2 in the Small Causes Court. In 1952, according to the petitioner, seven flats were handed over in pursuance of the undertaking. However, thereafter for 25 years, the petitioner kept quite for no valid and convincing reason for not enforcing the undertaking, though the vague averments are made in the writ petition that he was making consistent efforts. Nothing is brought on record in support thereof. What is brought on record, is the letter dated 4th August, 1977 (Exhibit-J) of respondent No. 2 addressed to the petitioner, inter alia, stating that the possession of the remaining 17 premises will be given, provided the petitioner accepts the occupants thereof as its tenants. After refusing the offer, the petitioner once again kept quite till filing of the present petition in February 1988. From 1978 to 1988, the petitioner claims to have made representations to respondent No. 2 requesting to hand over possession of the said flats, but except an averment, there is nothing on record to support the statement made in the writ petition. No satisfactory explanation is offered by the petitioner for keeping quite, since 1952 till 1988 for not taking any steps whatsoever for enforcing the undertaking of respondent No. 2 recorded in the consent decree.

17. Mr. Diwan, learned Counsel for the petitioner, submitted that breach of the undertaking is a continuous wrong and right to enforce such undertaking does not get barred by limitation. In support of this contention, Mr. Diwan, placed reliance on the decision of this Court in the case of *Usman Gani v. State of Maharashtra and another* and *A.S. Bidarkar and others*, reported in 1993 Mh.L.J. 1331 and submitted that the High Court, being a Court of record, under Article 215 of the Constitution of India, its powers cannot be restricted or trammelled by any ordinary legislation including the provisions of the Contempt of Courts Act. He placed reliance on para 13 of the report which reads thus :-

"13. Apart from this, as the power is being exercised under Article 215, there is no question of any limit being laid down within which the High Court may commit a person for contempt of itself. There is no question of section 20 of the Contempt of Courts Act in any manner prescribing either a pre-condition or a time limit within which the High Court may exercise its powers under Article 215 of the Constitution of India. Therefore, even presuming that the filing of the Notice of Motion did not amount to initiation of the proceedings and it is only when the Court really hears the Notice of Motion, that there is initiation of

proceedings, still so long as the alleged contemnor is made aware of the charge and is given full opportunity to meet the charge, this Court can commit for contempt at any time. Section 20 can in no trammel or curtail the inherent power of this Court."

We are afraid, this proposition of law, though cannot be disputed, would not be of any help to the petitioner since we are dealing with writ petition under Article 226 and not contempt proceedings initiated by the petitioner for enforcement of the undertaking given by respondent No. 2 in the consent decree. In the present petition, the prayer is only for possession. No averments or prayers, are made in the petition for initiating contempt action against respondent No. 2 and in view thereof the question of making so-called contemnor aware of the charge and giving full opportunity to meet charge did not arise. Similarly, Mr. Diwan placed reliance on the decision of Madhya Pradesh High Court in the case of Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar, , and invited our attention to the observations of the Supreme Court that special feature of the procedure to be followed in the contempt proceeding is a summary procedure which is recognised not only in India but also abroad. We fail to understand how these observation in the report would help the petitioner since the Supreme Court has made these observations in criminal appeal arising out of the contempt proceedings. He further placed reliance on the decision of the Apex Court in the case of Firm Ganpat Ram Rajkumar Vs. Kalu Ram and Others, and contended that failure to give possession, if it amounts to a contempt in the facts of the case, was a continuing wrong and there was no scope for application of section 20 of the Act. In para 7 of the report, the Apex Court held thus :

"7. Another point was taken about limitations of this application u/s 20 of the Act, section 20 states that no Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed. In this case, the present application was filed on or about 3rd November, 1988 as appears from the affidavit in support of the application. The contempt consisted, inter alia of the act of not giving the possession by force of the order of the learned Sr. Sub Judge, Narnaul dated 3rd November, 1988. Therefore, the application was well within the period of one year. Failure to give possession, if it amounts to a contempt in a situation of this nature is a continuing wrong. There was no scope for application of section 20 of the Act."

The Apex Court, made these observations in (Civil Misc. Petition No. 1103/1989 filed in SLP No. 5597 of 1987), decided on 22nd September 1989, in which an undertaking to vacate the premises in dispute was recorded and it was violated. The Civil Misc. Petition, thereafter, was filed for enforcement of an undertaking. It is in this background the Apex Court made the aforesaid observations. However, in the present case, the undertaking was recorded in the consent decree passed in 1952, to vacate the premises and hand over possession by February 1953. In February 1953, the Contempt of Courts Act, 1952 was in force. Under 1952 Act,

no limitation was provided to initiate contempt proceeding and, in view thereof, the petitioner should have taken steps within a period of three years under Article 181 of the Limitation Act (IX of 1908). The petitioner, has failed to take any steps, whatsoever either within a period of 3 years or within reasonable time. In our view, the law laid down by the Apex Court in the aforesaid reports would not apply to the present case. The petitioner was in deep slumber for more than 36 years, which, undisputedly an unreasonable time. Further more in 1953 itself, when the suit of respondent No. 2 filed in the Small Causes Court was dismissed, the petitioner was aware that respondent No. 2 would not be able to observe the undertaking. This was also confirmed in the year 1977 when the letter dated 4th April, 1977 (Exhibit-J) was written to the petitioner to accept all the respondents as its direct tenants. Despite all this, the petitioner failed to initiate appropriate proceedings much less the contempt proceeding against respondent No. 2. In our opinion, therefore, the jurisdiction of this Court under Article 226 cannot be invoked for enforcement of the undertaking recorded by this Court on 29th February, 1952, in the said consent decree passed in the civil appeal, having failed to initiate either execution or contempt proceedings within a period of limitation, inasmuch as after a period of 36 years. Similarly in the given circumstances, in our view the undertaking of respondent No. 2, would not bind the other respondents who were not even party to the proceedings in which it was recorded by this Court. We cannot agree with the submission of Mr. Diwan, the learned Counsel for the petitioners.

18. The effect of the undertaking needs to be seen from other angle also. It is, now, well settled position of law that the remedy under Article 226 is not available to enforce a contract. Similarly, writ can be granted only in a case where there is statutory duty imposed on the public body or officer and there is failure on the part of that office to discharge that obligation. The chief function of a writ is to compel performance of public duties prescribed by statute. In the present case, we do not see any such statutory duty imposed upon respondent No. 2 or its officers and, therefore, question of failure on the part of that officer to discharge his statutory obligation does not arise. The right accrued to the petitioner was under the decree passed by this Court, much less the Civil Court, in which the undertaking of respondent No. 2 was recorded. The law is absolutely clear that for the enforcement of the undertaking, a remedy is available under the Contempt of Courts Act. Mr. Walawalkar, learned Counsel for respondent Nos. 16 to 19, placed reliance on the decision of the Apex Court in *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, , which was followed by the Apex Court in another case in the *The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others*, . The Apex Court in *Bihar Eastern Gangetic Fishermen Co-operative Society Ltd.* case, in para 15, held thus :

"15. Re: Contention No. 3.---This contention is also well founded and must prevail. There is abundant authority in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty

imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate Tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. See *Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others*, *Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College*, and *Dr. Umakant Saran Vs. State of Bihar and Others*, . (In the instant case, it has not been shown by respondent No. 1 that there is any statute or rule having the force of law which casts a duty on respondents 2 to 4 which they failed to perform). All that is sought to be enforced is an obligation flowing from a contract which, as already indicated, is also not binding and enforceable. Accordingly, we are clearly of the opinion that respondent No. 1 was not entitled to apply for grant for a writ of mandamus under Article 226 of the Constitution and the High Court was not competent to issue the same."

Taking totality of the circumstances into account, so far as the undertaking is concerned, it cannot be said that it has a force of law which casts a duty on respondent No. 2, which they failed to perform. Non-observance of an undertaking recorded by the Civil Court in a decree cannot be said to be a statutory duty or public duty cast on respondent No. 2 simply because undertaking was given by a public body. In other words, an undertaking of the party recorded in the judgment and decree casting duty on the judgment debtor, which if they fail to perform, cannot be said to be a failure to perform duty cast under any statute or rule. And in view thereof, in our opinion, an extraordinary jurisdiction under Article 226 of the Constitution cannot be invoked for an enforcement of the undertaking recorded in the judgment passed in civil suit or appeal. In other words, in the present case, all that is sought to be enforced is an obligation flowing from the undertaking, which cannot be enforced by invocation of writ jurisdiction under Article 226 of the Constitution.

19. The maintainability of the writ petition has also been challenged on the ground that the jurisdiction under Article 226, cannot be invoked for execution of a decree passed in the Civil Appeal which has become time barred. Article 183 of the Limitation Act of 1908 (IX of 1908) provides limitation to enforce a judgment, decree and order within 12 years, where a right to enforce the judgment, decree or order accrues to some person capable of releasing the right. There is no dispute that the provisions of section 183 of the Limitation Act of 1908 would apply in the present case. Admittedly, no execution proceedings are ever initiated by the petitioner in the decree passed by this Court on 29th February, 1952 in Appeal No. 38 of 1951 filed by the petitioner. In 1988 when the writ petition was filed, not only the execution proceedings but an action for contempt was also barred by limitation. In our opinion, since the petitioner has

disabled himself from filing of the statutory remedy by his own faults, this Court cannot invoke extra ordinary jurisdiction under Article 226 of the Constitution and issue writ of mandamus or an order directing to hand over possession of the said flats in pursuance of the said consent decree. There is not only delay but, in our view, unreasonable delay has been caused by the petitioner in approaching this Court. The petitioner has lost all his legal rights which have accrued in his favour by the said consent decree. The petitioner has allowed his legal right to be lapsed by virtue of law of limitation and, therefore, in our view, this Court cannot extend its discretionary powers to give any relief to such petitioner with regard to the properties involved in the decree. At this stage, we would like to refer to the decisions relied upon by Mr. Walawalkar, learned Counsel for respondent Nos. 15 to 19, in the case of A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhvani and Another, , wherein the Apex Court in para 11 held thus :-

"We must express our dissent from the reasoning by which the learned Judges of the High Court held that the writ petitioner was absolved from the normal obligation to exhaust his statutory remedies before invoking the jurisdiction of the High Court under Article 226 of the Constitution. If a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under Article 226 to exercise its discretion in his favour. Indeed, the second passage extracted from the judgment of the learned C.J. in The State of Uttar Pradesh Vs. Mohammad Nooh, with its reference to the right to appeal lost "through no fault of his own" emphasizes this aspect of the rule."

In the present case also, the petitioner has failed to exhaust his statutory remedy before invoking jurisdiction under Article 226 of the Constitution. It is, therefore, clear that the petitioner has disabled himself from availing of the statutory remedy by his own fault in not doing so within the prescribed time. He cannot be permitted to urge that as a ground for the Court dealing with his petition under Article 226 to exercise its discretion in his favour. In our view, the writ jurisdiction is not meant for such litigant who slept in a deep slumber nearly for a period of 36 years and has approached this Court in 1988 for execution of a decree passed in 1952. The Apex Court, while disposing of a group of Civil Appeals in the case of State of Madhya Pradesh Vs. Bhailal Bhai and Others, , reiterated the principles laid down in the earlier judgment of the Supreme Court reported in A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhvani and Another, . In para 21 of the report, the Supreme Court held thus :-

"The learned Judges appear to have failed to notice that the delay in these petitions was more than the delay in the petition made in Bhailal Bhai's case, 1960 M.P.C. 306 out of which Civil Appeal No. 362 has arisen. On behalf of the respondents-petitioners in these Appeals (C.A. Nos. 861 to 867 of 1962) Mr.

Andley has argued that the delay in these cases even is not such as would justify refusal of the order for refund. He argued that assuming that the remedy of recovery by action in a Civil Court stood barred on the date these applications were made that would be no reason to refuse relief under Article 226 of the Constitution. Learned Counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Article 226. It appears to us, however, that the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. This Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but whereas the delay is more than this period, it will almost always be proper for the Court to hold that it is unreasonable. The period of limitation prescribed for recovery of money paid by mistake under the Limitation Act is three years from the date when the mistake is known. If the mistake was known in these cases on or shortly after January 17, 1956 the delay in making these applications should be considered unreasonable. If, on the other hand, as Mr. Andley seems to argue, that the mistake discovered much later this would be a controversial fact which cannot conveniently be decided in writ proceedings. In either view of the matter we are of opinion the orders for refund made by the High Court in these seven cases cannot be sustained."

It is thus clear that the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. In the present case, the limitation provided under Article 183 of the Limitation Act, was 12 years, whereas the petitioner has approached this Court by way of present writ petition under Article 226 nearly after 36 years, in 1988 for the execution of the said consent decree passed in 1952. This delay, in our view, is grossly unreasonable. Even if the case of the petitioner is accepted, no satisfactory explanation is offered for approaching this Court at belated stage. We could not find, any just and convincing ground for the petitioner to approach this Court in 1988. The present writ petition, therefore, deserves to be dismissed since it suffers from laches and gross delay, especially when other remedies have become time barred due to inaction on the part of the petitioner.

20. We would now like to consider whether the respondents jointly and severally have made out a prima facie case of tenancy/sub-tenancy and protection under the Rent Act. Mr. Diwan, learned Counsel for the petitioner, invited our attention to the affidavits filed by different respondents and has contended that the respondents are not sure as to what is their right to remain and continue in possession of the said flats. According to him, respondents have claimed different rights, viz. as allottee, tenant and sub-tenant, when in fact, their possession is illegal and unauthorised. We perused the affidavits filed by different respondents and found that the stand taken by almost all the respondents is

somewhat similar. We would like to refer to the affidavits of respondent No. 11 filed on behalf of respondent Nos. 11 to 15 which are more exhaustive. In the affidavit, the respondents have stated that their predecessors came in possession as allottees and after the death of the original allottees, all of them, being sons or daughters of the original allottees, they are their legal heirs and representatives and, that is how, inherited the tenancy right. It is further stated that after losing the right to execute the decree obtained by the petitioner in February 1952, the petitioner has accepted the occupants as direct tenants and, in any case, has accepted respondent No. 2 as tenant in the buildings and occupants, viz. respondent Nos. 3 to 19, are lawful sub-tenants in such case. They have specifically contended that the petitioner can seek possession only under the provisions of the Rent Act and the present remedy of writ petition under Article 226 cannot be resorted to. Mr. Diwan, learned Counsel for the petitioner said much about the inconsistency in the stand taken by the respondents. The other respondents have also taken somewhat similar stand. The affidavit filed by respondent No. 11 further proceeds, stating that the right to execute the decree as well as to enforce the undertaking recorded therein has come to an end by virtue of the limitation and by such acquiescence on the part of the petitioner, he has accepted respondent No. 2 as a tenant and all occupants as lawful sub-tenants. In the affidavit, the respondent No. 11 has demonstrated by placing lot of correspondence between the petitioner and the respondents on record the conduct of the petitioner on the basis of which the petitioner deemed to have accepted them as tenants and now the petitioner is estopped from denying the tenancy rights of occupants protected under the provisions of the Rent Act. Mr. Diwan, learned Counsel for the petitioner, invited our attention to the second affidavit filed by respondent No. 2 dated 13th July, 2001. To this affidavit, a chart has been annexed showing the names of the present occupants, original allottees, dates of occupation, transfer fees received from some and some other details. Relying on this document, he contended that respondent Nos. 16, 18 and 19 are neither the original allottees nor their heirs and in view thereof they are not entitled for protection either as tenants or sub-tenants in the disputed premises. He further contended that respondent No. 17 is also not the original allottee, however, he could not support his contention by any documentary evidence. We do not deem it proper to make reference to the affidavits filed by various parties in detail and to the annexures thereto in the present petition keeping in view the scope of Article 226. One thing is clear that they raise various disputed questions of facts. However, we would like to mention the submission made on behalf of the respondents that in view of protection available under the provisions of the Rent Act, the consent decree passed by this Court in the suit filed by the petitioner against respondent No. 2 is a nullity and, therefore, the undertaking given therein cannot be enforced either by filing the writ petition under Article 226 or in the contempt proceedings and that remedy, if any, now available to the petitioner is to adopt appropriate proceedings before the appropriate forum for getting back possession of the said flats. This Court in the writ petition under Article 226 cannot decide the issues raised by the learned

Counsel appearing for the parties. However, we would like to, prima facie, satisfy ourselves whether there exists relationship between the petitioner and the respondents as landlord and tenant/sub-tenant. While considering this, if we make any observation, we may not be understood to have expressed any opinion on the merits of the issue regarding tenancy or sub-tenancy and protection under the provisions of the Rent Act.

21. When the said flats were requisitioned in 1942 and derequisitioned in 1946 and the order under Rule 81(2) of the Rules was passed in 1946, the Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1944 was in force (for short, "Act of 1944"). Section 10 of the Act of 1944 provided creation of sub-tenancy by the tenant of any portion of his premises to the sub-tenant, provided he forthwith intimates in writing to his landlord the fact of having so sublet the premises and also the rent at which they may have sublet. In the light of this provision, it cannot be decided in the writ petition under Article 226 as to whether respondent No. 2, who was claiming tenancy on the basis of the order passed under Rule 81 of the Rules, intimated in writing to his landlord the fact of the having so sublet the premises to respondent Nos. 3 to 19 without allowing the parties to adduce evidence to that effect. The conduct of the petitioner, prima facie, shows that the petitioner did accept the respondent No. 2 as tenant and other respondents as sub-tenants and, hence, they may be entitled for protection under the provision of the Rent Act. It further appears to us that though the protection of the sub-tenant was withdrawn in 1948, the sub-tenancies were once again legalised by issuing an ordinance with effect from 21st May, 1959 and, thereafter, 1987 amendment to the Rent Act legalised all illegal sub-tenancies upto 1st February, 1973, and, in view thereof, prima facie, it cannot be said that the respondents are not protected under the provisions of the Rent Act. Perusal of certain provisions of the Rent Act of 1944 shows that a tenant could be evicted on satisfaction of the controller about the grounds of eviction, whose order was appealable before the Collector and no Civil Court has jurisdiction to settle, decide or deal with any question required to be settled, decided or dealt with by the Controller or Collector. Thus, it is not disputed when the consent decree was passed by this Court in February 1952, the High Court was a Civil Court as contemplated u/s 14(3) of the Act of 1944. In view of this position, it cannot be said that the consent decree passed by this Court has resulted into determination of respondent No. 2's tenancy or sub-tenancy of other respondents. In view of 1959 amendment to the Rent Act and the subsequent amendment of 1987, the sub-tenancy created prior to 1st February, 1973 has been legalised, notwithstanding anything contained in any contract or in any judgment, decree or order of a Court, and such sub-tenants cannot be evicted except by filing a suit in the competent rent Court, viz. Bombay Small Causes Court. This position of law, has been reiterated by the Apex Court in Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, relied upon by Mr. Walawalkar, learned Counsel for respondent Nos. 15 to 19. Para 18 of the report reads thus :

"18. Construing the provisions of sections 12, 13 and 28 of the Bombay Rent Act in the light of the public policy which permeates the entire scheme and structure of the Act, there is no escape from the conclusion that the Rent Court under this Act is not competent to pass a decree for possession either in invitum or with the consent of the parties on a ground which is de hors the Act or ultra vires the Act. The existence of one of the statutory grounds mentioned in sections 12 and 13 is a sine qua non to the exercise of jurisdiction by the Rent Court under those provisions. Even parties cannot by their consent confer such jurisdiction on the Rent Court to do something which according to the legislative mandate, it could not do."

22. Mr. Walawalkar submitted that the decree passed without jurisdiction is a nullity and non est and the validity of such decree could be raised at any stage even at execution stage. He made this submission in support of his earlier submission that the respondents got protection under the Bombay Rent Act of 1944. u/s 9 of the Act of 1944, the Controller was competent to pass an order of eviction which could be challenged before the Collector in appeal. Section 14 provides appeal and sub-section (3) specifically provides that no Civil Court has jurisdiction to settle, decide or deal with any question which required to be settled, decided or dealt with by the Controller or the Collector and, in view thereof, if the respondents had protection as tenants/sub-tenants, this Court, in its Ordinary Original Civil Jurisdiction, had no jurisdiction to order eviction of tenant or sub-tenant, viz. respondent Nos. 2 to 19. In other words, the consent decree passed by this Court is therefore, without jurisdiction and hence it is nullity. The Apex Court in the case of Chiranjilal Shrilal Goenka (Deceased) through Lrs. Vs. Jasjit Singh and Others, relied upon by Mr. Walawalkar, in para 18 of the report, considered its own several judgments and observed that a decree passed by a Court without jurisdiction on the subject matter or on the grounds on which the decrees made which goes to the root of its jurisdiction or lacks inherent jurisdiction is a coram non judice. It is further held that a decree passed by such a Court is nullity and is non est. Invalidity of such a decree can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. In this decision, the Apex Court has reiterated the principles that a decree passed by a Court without jurisdiction on the subject matter or on other grounds which goes to the root of its exercise of jurisdiction, lacks inherent jurisdiction. It is a coram non judice, a decree passed by such Court is nullity and is non est and its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The Apex Court further observed that the defect of jurisdiction strikes at the very authority of the Court to pass decree which cannot be cured by consent or waiver of the party. While referring to the case of Ferozi Lal Jain Vs. Man Mal and Another, , the Apex Court observed that a compromise de hors grounds for eviction was arrived at between the parties u/s 13 of the Delhi and Ajmer Rent Control Act. A decree in terms thereof was passed. The possession

was not delivered and execution was laid. It was held that the decree was nullity and, therefore, the tenant could not be evicted. In short, it is held by the competent forum, that the respondents became tenants or sub-tenants in which case the said consent decree would be without jurisdiction. However, in the absence of adjudication or determination of the legal rights of the parties such as whether there exists relationship of tenant and landlord, by the competent Court the consent decree passed by this Court, in our view, at this stage cannot be declared nullity.

23. We would also like to test the arguments of Mr. Godbole, learned Counsel for the respondents that the tenancy was created by operation of law by issuing the Order under Rule 81(2) of the Rules. The relevant extract of Rule 81 of the said Rules which reads thus :

"81(1)(bb)(i),(ii) & (iii)

81. General control of Industry, etc.

(1) xxx

(2 The Central Government or the Provincial Government so far as appears to it to be necessary or expedient for securing the defence of British India or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, may by order provide.

x x x x x

x x x x x

(bb) for regulating the letting and sub-letting of any accommodation or class of accommodation, whether residential or non-residential, whether furnished or unfurnished and whether with or without board, and in particular---

(i) for controlling the rents for such accommodation either generally or when let to specified persons or classes of persons or in specified circumstances.

(ii) for preventing the eviction of tenants and sub-tenants from such accommodation in specified circumstances, and

(iii) for requiring such accommodation to be let for either generally, or to specified persons or classes of persons, or in specified circumstances;"

The Government of India, in exercise of powers under the aforesaid rules, directed the Secretary of the petitioner to let all the said premises released from the requisition by an order dated 26th August, 1946 to respondent No. 2 with effect from the date on which the order of derequisition came into effect. For the sake of convenience, we have reproduced the said order in the earlier part of our reasoning. Close look at the order shows that there is direction of compulsory letting as contemplated by the aforesaid Rule and hence, this will be permanent arrangement whether the landlord likes it or otherwise and whether the landlord accepts it or otherwise. Prima facie, it appears that the tenancy stood created by

operation of law. This Court, while considering the aforesaid Rule in the case of *Ardeshir P. Banaji v. Union of India and others* (supra), in para 6 of the report held thus :-

"6. Now turning to the case in hand, it is necessary to bear in mind that we are not dealing with an order of requisition but hiring of the premises under the Defence of India Rules. The concept of requisition is different from compulsory hiring or letting. In fact, this distinction is recognised by the Constitutional Bench in *Grahak Sanstha Manch's* case to which I shall advert a little later. But first it will be necessary to make a brief reference to the relevant provisions of Defence of India Act and the Rules. The Defence of India Act, 1939 was enacted to provide for special measures to ensure the public safety and interest and the defence of British India and for trial of certain offence. Section 2(1) of the Act conferred powers on the then Central Government to make such Rules as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public orders or the efficient prosecution of war or for maintaining supplies and services essential to the life of the community. Sub-section (2) of section 2 provided that without prejudice to the generality of the powers conferred by sub-section (1) the rules may provide for matters enumerated in Clauses (i) to (xxxv) of sub-section (2). Clause (xxiv) refers to the requisitioning of property and Clause (xx) deals with control of industry for various purposes mentioned in that clause. As far as the Defence of India Rules framed u/s 2 of the Act are concerned, it is seen that Rule 75-A deals with the Government's power of requisition. Rule 75-A empowered the Government to requisition any premises if in the opinion of the Central Government or the Provincial Government it was necessary and expedient to do so for the various purposes mentioned in Rule 75-A. Then Rule 81 provided for power of the Government for regulating general control of industry and the relevant provision relating to control of rents is contained in Clause (bb) of Rule 81 which reads as follows :

"(bb) for regulating the letting and sub-letting of any accommodation or class of accommodation whether residential or non-residential, whether furnished or unfurnished and whether with or without-board, and in particular-

(i) for controlling the rents for such accommodation either generality or when let to specified persons or classes of persons or in specified circumstances,

(ii) for preventing the eviction of tenants and sub-tenants from such accommodation in specified circumstances, and

(iii) for requiring such accommodation to be let for either generally or to specified persons or classes of persons or in specified circumstances."

Thus, Rule 81 conferred power on the Government to regulate the letting and sub-letting of any accommodation or class of accommodation as well as control of the rents. The Government was empowered to require the landlord to let the accommodation to specified persons or classes of persons generally. It is under

the power conferred by Rule 81 that the then Central Government hired the premises of the petitioner in 1942 for war purposes. It cannot be denied that there was element of compulsion in hiring the premises of the petitioner, but nevertheless it was a case of hiring or letting of the premises and not requisitioning of the premises."

It is thus clear that Rule 81 confers powers on the Government to regulate the letting and sub-letting of any accommodation or class of accommodation as well as control of the rents. Plain reading of the aforesaid Rule shows that there exists element of compulsion in hiring the premises of the landlords and the Government was vested with powers for regulating general control of industry and the relevant provisions relating to the control of rents as contained in Clause (bb) of Rule 81. The Apex Court in the case of *Grahak Sanstha Manch and others Vs. State of Maharashtra*, has clearly noted the distinction between compulsory letting and requisitioning of the premises. In case of compulsory letting, there is a creation of relationship of landlord and tenant even though element of compulsion is inherent in such arrangement. On the other hand in requisition the properties are taken out of the control of the owner for the time being for certain specified purpose, subject to payment of compensation. Thus, it is clear that letting out is intended to be a permanent arrangement, while requisition is intended to be only a temporary arrangement. Mr. Diwan, did submit that the said flats were continued to be treated as under requisition by respondent No. 2. We are afraid, this submission is devoid of any substance. Derequisitioning order dated 26th August, 1946 passed by the Collector of Bombay is absolutely clear, which released the said flats also from requisition. We do not see any reason for the petitioner to proceed on that line. Since the petitioner continued in possession, even after derequisitioning of the said flats, it cannot be said that the said flats were continued to be treated as under requisition. It is apparent that on the basis of an independent order dated 26th August, 1946 passed by the then Government of Bombay, under Rule 81(2) of the Rules the respondents continued in possession. Natural consequence follows that the landlord, if desires, to get back possession of the premises which are let out, may have to take recourse to the provisions of the Rent Legislation. Thus, an order dated 26th August, 1946 passed under Rule 81(2), does have element of compulsion in hiring of the said flats, owned by the society and in view thereof the petitioner will be entitled to recover possession only on the grounds available under the Rent Act.

24. Mr. Diwan, learned Counsel for the petitioner did submit that the order dated 26th August, 1946 under Rule 81 of the Rules which purports to have been made by the Government of Bombay, was not made in accordance with the requirement of law and is void and is of no effect and therefore, no reliance can be placed on this order for any purpose whatsoever, much less to claim the tenancy rights in the suit premises. At this stage, we would like to note that the petitioner had number of opportunities and occasions right from the date of passing of the order to challenge the same but he did not do so. In 1947, the

petitioner filed a suit in this Court bearing No. 2121 of 1947 against the respondent No. 2 alone for eviction solely on the ground that respondent No. 2, was a trespasser in the said flats. Thereafter the present writ petition was filed in 1988, here also there is no challenge to the said order. This shows that the possession of the respondents continued after August 1946 solely on the basis of the order passed under Rule 81 of Rules. No explanation has come forward as to why the petitioner kept quiet since 1952 till 1988. The conduct of the petitioner, prima facie, leads to an inference that the relationship of the landlord and tenant is created, inasmuch as the petitioner was directed to let the premises to the respondents and they allowed the tenants to continue in possession.

25. In the result, the petition is dismissed.

No order as to costs.

Authenticated copy of this order may be made available to the parties.