

(1976) 07 BOM CK 0013

In the Bombay High Court

Case No : Special Civil Application No. 218 of 1976

S.R.B. Gaikwad

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 23-07-1976

Acts Referred:

Bombay Rent Act, 1947 — Section 12, 12(1), 13, 14, 15
Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 12
Constitution of India, 1950 — Article 133, 227
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 2
Registration Act, 1908 — Section 17
Transfer of Property Act, 1882 — Section 106, 111, 116

Citation : AIR 1977 Bom 220

Hon'ble Judges : Joshi, J;Deshpande, J

Bench : Division Bench

Advocate : S.C. Chagla, M.N. Kothari, M.J. Bhatia and P.K. Pandit, for the Appellant; M.V. Paranjpe, L.J. Manjrekar and J.H. Parekh, for the Respondent

Judgement

Deshpande, J.—The building in which flat No. 8 is located and several other buildings once belonged to Messrs. Colaba Land and Mill Company Ltd. This flat and several other flats were obtained on lease by the Governor General in Council under a written agreement dated 21st June, 1944. The Garrison Engineer of the Defence Department is treated as the tenant on behalf of the Governor General. The Colaba Land and Mill Company Limited went into liquidation and the buildings were purchased in or about 1966 by a Housing Co-operative Society formed by the tenants of the flats therein under the name and style of Colaba Land Co-operative Housing Society Ltd., hereinafter referred to as "the Society", from the Official Liquidator with the sanction of this Court. The Society had offered for sale all the flats to the Central Government held by it as tenant, in the same manner as were purchased by the other tenants by becoming a member of the Society and purchasing such shares as would justify member's occupation of the flats as such members. The Government, however, declined the offer, making it clear that sale of the building to the Society would be subject to the tenancy

rights held by it. While sanctioning the sale, the High Court also confirmed the tenancy rights of the Government in all these flats.

2. The petitioner was serving in the Army and as such public servant, the flat No. 8 in dispute was allotted to him on 8-8-1966. The petitioner was due to retire on 17-4-1967. He was, however, re-employed on 18-4-1967 for a further period of three years. In the meanwhile, the petitioner and his wife made an application for membership of the Society by reference to this very fiat of which he was in possession as the allottee from the Government, on 16-9-1966. Their membership was accepted on 1-7-1967 and this very flat was allotted by the Society to the petitioner and his wife on 21-7-1967 notwithstanding the purchase of the buildings by it being subject to the tenancy rights of the Government in the flats held by it and the said flat was neither surrendered by the petitioner to the Government nor could it be surrendered by the Government to the Society. It is not in dispute that the rent of this flat along with the rent of several other flats continued to be sent by the Garrison Engineer to the Society every month and the Society is receiving the same subject to its objections made clear in the correspondence.

3. On 20-10-1967 the petitioner applied to the Army Head Quarters for de-hiring the flat, i. e. giving up its tenancy rights therein. On 12-7-1968 the petitioner was called upon in this connection to give a certificate that he would not ask for re-employment. This requisition seems to have been made in accordance with the then policy to consider de-hiring the flats, in cases of those who had retired and were not to be re-employed again. The petitioner furnished the said certificate on 17-7-1968. He also seems to have resigned earlier, which resignation became effective from 24-7-1968. It would have been necessary for him to vacate the flat on his resignation becoming so effective. The Army Head Quarters on 9-10-1968, however, directed staying of eviction proceedings pending disposal of his de-hiring application.

4. In the meanwhile, a policy decision seems to have been taken by the Army Head Quarters not to de-hire such flats in view of the deficiency in the accommodation for the service personnel. This policy decision was communicated to all employees concerned and given wide publicity by a Circular letter dated 31st October, 1969. By letter dated 14th January, 1970, allotment of the flat to the petitioner was cancelled with effect from 1st November, 1968, making specific reference to this Circular. The petitioner was called upon to vacate the accommodation forthwith. Presumably apprehending all this, a few days earlier, on 16-3-1970, the Society, as the owner of buildings and the petitioner and his wife issued a notice terminating the tenancy of respondent No. 1 in regard to the flat in dispute.

5. The Estate Officer seems to have been moved to issue a show cause notice dated 20th January, 1970 calling upon the petitioner why order of eviction should not be passed against him under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act of 1958, as it then stood. The petitioner seems

to have appeared before the Estate Officer on 10th June, 1970. According to him, the proceedings were adjourned sine die because of the pendency of his application for de-hiring.

6. In the meanwhile, the Public Premises (Eviction of Unauthorised Occupants) Act of 1971, hereinafter referred to as "the Act", was enforced repealing the 1958 Act and another Estate Officer was appointed. On 2-1-1971, a fresh show cause notice was issued by the Estate Officer under the provisions of the Act. The petitioner appeared before him and showed the cause. The Estate Officer then passed an order of eviction on 1-3-1972. His appeal to the principal Judge of the City Civil Court was dismissed on 21-11-1975. The validity and legality of this order is assailed in this application under Article 227 of the Constitution.

7. Mr. Chagla, the learned advocate appearing for the petitioner, contends that the eviction order is without any jurisdiction inasmuch as the premises in dispute ceased to be "public premises" since determination of the lease by notice dated 16th March, 1970. It was not disputed before us that on that date the Society, the petitioner and his wife; did terminate the lease of respondent No. 1 and the contents of the said notice did comply with the provisions of Section 106 of the T. P. Act. Even if the competency of the petitioner and his wife to terminate the lease is disputed, the competency of the Society to terminate the lease is beyond controversy inasmuch as the Society admittedly had purchased the property from the Official Liquidator after the original owner Company went into liquidation.

8. Mr. Paranjape, the learned advocate appearing for respondent No. 1", however, contended that under the terms of the lease dated 21st June, 1944, the landlord did not have any right to terminate the lease at all and in terms of Clause 5 thereof the tenant alone is competent to so terminate the lease. It was not disputed before us that the said lease deed dated 21st June, 1944, is not a registered document. If the lease deed is construed as disabling the landlord and enabling the tenant alone to terminate the lease, the lease would turn out to be a lease for indefinite period. Such a lease deed is liable to be registered u/s 17 of the Registration Act. The lease deed then shall have to be adjudged as being inadmissible in evidence on this ground.

Once the lease deed is excluded from consideration, the tenancy shall be deemed to have been a month to month tenancy, liable to be determined by a notice as contemplated under S. 106 of the T. P. Act. That the Government was the tenant of the premises and was paying rent as such tenant till the tenancy was determined by the notice dated 16-3-1970 is not disputed before us. In view of this, Mr. Paranjape's contention is liable to be rejected. We shall, therefore, have to proceed on the basis that the tenancy of the Government has been validly terminated by the notice dated 16-3-1970. Even so, the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter referred to as "the Rent Act." protects the tenancy of the Government, as the application of this Act to the premises in dispute is not disputed before us.

9. Mr. Chagla, however, contends that the premises in dispute having been taken on lease by the Government, the premises cease to be such public premises with the determination of the contractual lease, within the meaning of Section 2(e) of the Act. According to Mr. Chagla, if the premises cease to be public premises as denned under the Act, the Estate Officer can claim no authority to issue the show cause notice dated 2-1-1971 or pass the order dated 1-3-1972. The contention, no doubt, is attractive and apparently plausible.

10. Section 2(e) of the Act, stripped of the unnecessary details is as follows :

" "Public Premises" means any premises belonging to or taken on lease or requisitioned by, or on behalf of, the Central Government,

xx xx xx".

The enactment, as indicated in the pre amble, is intended to provide for the eviction of unauthorised occupants from public premises and for certain incidental matters. The enactment is not so much concerned with the title as with the possessory rights vested in the Central Government, and Section 2(e) only indicates the sources by which such right to possession can be acquired, one such being, the taking of the premises on lease from its owner. The definition thus is descriptive of the source or origin of the possessory rights acquired by the Central Government. It is the continuance of the vesting of this possessory right in Government and not so much more the origin thereof, that makes any premises, a public premises under the Act. The Act pro- vides for a summary remedy against the unauthorised occupants to ensure unobstructed and undisturbed possession of the premises by the Government, for the purposes for which the possessory rights are acquired and through such persons whose possession is conducive to and in keeping with the object of such acquisition. The special summary procedure is justified by the "public interest" involved therein. This summary remedy is integrally connected with the mode of enjoyment of such possessory rights by the Government and is indispensable part thereof. The enactment is thus aimed at ensuring the continuance of the possessory rights acquired through the modes indicated in the definition clause.

11. The contract of lease, no doubt, gives rise to the estate and interest of the lessee in the property, bare right to pos-session being only a part of such estate and interest. The determination of the lease, no doubt, puts an end to the contract and such interest and the estate. That must be the necessary consequence and effect of such notice u/s 106 read with Section III of the T. P. Act. However, provisions of the Rent Act afford some protection to the tenants against eviction and prevents such determination of lease from having its full effect. Reference in this context can conveniently be made to Sub-section (1) of Section 12 of the Rent Act.

"A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays, or is ready and willing to pay, the amount of the standard rent and permitted increases if any, and observes and performs the

other conditions of the tenancy, in so far as they are consistent with the provisions of this Act."

12. Now, it is well settled that the provisions of this section come into operation as soon as the notice determining the contractual tenancy becomes effective and not till then. Even the liability of the tenant to eviction under the Act does not arise till such lease is terminated first and the statutory tenant does or omits to do something justifying eviction under the Rent Act. This is the ratio of the judgment of the Supreme Court in the case of *Bhaiya Punjalal Bhagwanddin Vs. Dave Bhagwatprasad Prabhuprasad*, on which reliance was placed by Mr. Chagla. The section introduces certain fetters on the right of the landlord to recover possession and affords an immunity from eviction, to which the landlord otherwise gets entitled on determination of the contractual lease. This immunity, however, is dependant (1) on the tenant being ready and willing to pay standard rent and permitted increases, and (2) on observance and performance of conditions of the tenancy, in so far as they are consistent with the provisions of the said Act. There cannot be any quarrel with the contention of Mr. Chagla that, with the determination of the original contractual lease, the status of irremovability of the tenant as also his obligation to comply with the terms of the lease is entirely the creature of the statute; and contract ceases to have any operation thereafter. It is in this sense that the tenant ceases to be a contractual tenant and assumes the character of what is in common parlance described as a statutory tenant.

13. Notwithstanding all this, what requires to be noticed is that, the protected possessory right or interest, was once the creature of the contractual lease. In spite of the determination of such lease and incapacity of the tenant and the landlord to enforce the terms of the contract, the ex-tenant actually happens to enjoy still, what once was the fruit and the product of the same contractual lease. In other words, the entire interest covered by the possessory right created by the contract does not come to an end with the determination of the lease but part of it, at any rate, i. e. the bare right to remain in possession still survives and is protected by the statute. The right to possession acquired by the Central Government under the lease on taking the same on lease, thus continues to exist and is protected, though his lease interest and the estate comes to an end. The premises do not cease to have been "taken on lease" as the phraseology is merely descriptive of how the possessory right originated. The loss of contractual security, and the substitution thereof by the cover of the statutory protection, does not affect, at any rate, the kernel, i. e. the possessory right which also was the creature of the contractual lease. It is difficult to see how the premises cease to be public premises when in spite of the determination of the lease, possessory right created thereunder continues to be vested in the Government. As discussed earlier, the Act deals with possessory rights of the Government. The Rent Act prevents divesting the Government of these rights even after the end of the contract. In essence and even in a literal sense the premises still continue to be "public premises". Determination of contractual lease is one thing. Destruction of

the entire interest created thereby is quite another thing. The determination of the lease ordinarily results in the end of all the interest and rights created by the lease. But continuance of the same or part thereof can be ensured by other modes also. In the present case, continuance of the possessory rights created by contract is ensured by the statute. This statutory protection may not cover the estate and entire extent of interest covered by the contractual lease. Surviving possessory rights, however, still happen to be the part and residue of the same interests. Notwithstanding the determination of the lease, possessory rights therein continue to be held by the tenant and protected by the statute. Holding of this possessory rights even in their limited extent by the Government, in our opinion, is enough to ensure the continuance of the premises as "public premises" within the meaning of Section 2(e) of the Act.

14. Mr. Chagla strongly relied on the judgment of the Supreme Court in *Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others*, Sometime after the expiration of the lease period of five years, the landlord instituted proceedings for possession under the Rent Act against the tenant Maneklal who had by that time become a statutory tenant, on expiry of the lease, A decree for possession was passed against him. During the pendency of the eviction proceedings Maneklal inducted the appellant, Anand Nivas (Private) Limited, in a portion of the premises as his subtenant. The decree was executed against the portion occupied by the tenant. The appellant, however, resisted the execution of the decree in regard to the portion in its occupation by instituting a suit, claiming to be original sub-tenant and having become tenant on the determination of the tenancy of Maneklal. The controversy reached the Supreme Court at the interlocutory stage of interim relief for injunction. All the courts declined to grant injunction. The Supreme Court held (1) that even though the lease authorised the tenant Maneklal to sub-lease, the tenant ceased to have any such power to sub-let, after the contractual lease had expired, and (2) the Supreme Court also further held that even the amended Section 15 of the Rent Act cannot clothe such statutory tenant with right to sub-let as the word "tenant" in Sections 14 and 15 is intended to cover contractual tenant as against its connotation in Section 12 dealing with statutory tenants and Section 13(e) cannot have the effect of altering the import of the said word in Section 14 or 15. The two English cases and one Calcutta case, on which reliance was placed, were distinguished on the basis of the wording of the concerned provisions which enabled even the statutory tenant to sub-lease.

15. We are not concerned in the present case with any such point and the case is clearly distinguishable. Strong reliance, however, was placed on the following extracts from para. 27 of the judgment in reference to Section 12 of the Rent Act:

(1) "A person remaining in occupation of the premises let to him after the determination of or expiry of the period of the tenancy is commonly though in law not accurately, called a statutory tenant. Such a person is not a tenant at all."

(2) "His right to remain in possession after the determination of the contractual

tenancy is personal."

(3) "With the determination of the lease, unless the tenant acquires the right of a tenant holding over, by acceptance of rent or by assent to his continuing in possession by the landlord, the terms and conditions of the lease are extinguished, and the rights of such a person remaining in possession are governed by the statute alone."

(4) "Section 12(1) of the Act 57 of 1947 merely recognises his right to remain in possession so long as he pays or is ready and willing to pay the standard rent and permitted increases and performs the other conditions of the tenancy, but not the right to enforce the terms and conditions of the original tenancy after it is determined,"

16. Mr. Chagla also relied on the identical observations in *Bhaiya Punjalal Bhagwanddin Vs. Dave Bhagwatprasad Prabhuprasad*, and the judgment in the case of *The Calcutta Credit Corporation Ltd., and Another Vs. Happy Homes (P) Ltd.*, in which the ratio of its judgment in *Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others*, was affirmed.

17. Mr. Chagla then relied on the judgment in the case of *Ganga Dutt Murarka Vs. Kartik Chandra Das and Others*, and of this Court reported in the case of *Shrinivas Subyya Alwa Vs. Krishnavani Vasudeo Mudliyar*, , in which the ratio of *Ganga Dutt*'s case is followed. In both the cases, tenant challenged the eviction decrees passed under the respective Rent Acts on the ground that the landlord accepted rents after the expiry of the lease, making him a "tenant holding over" and eviction proceedings, without determination of such fresh lease created u/s 116 of the Transfer of Property Act, by notice, were not maintainable. It was held that in cases where, possession of the tenant is protected by the Rent Act. the landlord cannot be said to have created new lease or attracted the provisions of Section 116 of the Transfer of Property Act merely by acceptance of rent from the tenant after the expiry or determination of the lease. This ratio has no relevance, but following observations from the Supreme Court judgment at p. 1070 were relied on by Mr. Chagla:

(1) "Occupation of premises by a ten-ant whose tenancy is determined is by virtue of the protection granted by the statute and not because of any right arising from the contract which is determined. The statute protects his possession so long as the conditions which justify a lessor in obtaining an order of eviction against him do not exist" The Court then observed :

(2) "Once the prohibition against the exercise of jurisdiction by the Court is removed, the right to obtain possession by the lessor under the ordinary law springs into action and the exercise of the lessor's right to evict the tenant will not, unless the statute provides otherwise, be conditioned."

18. In our opinion, neither the ratio of these cases, nor the observations relied on therefrom and extracted above, in any way run counter to our above view,

even if the observations are read without reference to the context and the point arising therein. The observations that, on the determination of the contractual lease, ex-tenant ceases to be the tenant, or that right of possession thereafter becomes personal, or that acceptance of rent thereafter does not create fresh tenancy, go only to emphasise how contractual rights and obligations cease to be operative. The observations do not, expressly or impliedly suggest that surviving possessory rights cease to be the creature of the same contractual lease, as these once were, or any new rights come into existence on getting the support of the statute which were not in existence till then. The second passage from *Ganga Dutt Murarka Vs. Kartik Chandra Das and Others*, rather than militate, actually fortifies our view that even after the tenancy becoming statutory, contractual rights created do not come to an end. How else the ordinary right to possession of the landlord could "spring" on the removal of the statutory bar, as indicated therein?

19. The premises, in our opinion, do not go out of the purview of Section 2(e) of the Act as long as, the interest, created by the contractual lease on taking the same on lease from its owner, continues to vest in the Central Government. That such interest stands reduced to the bare personal right of possession or that its continuance is propped up by the statute and not by the contract, are all besides the point. Personal right of possession in cases where tenancies are held by the corporate or inanimate bodies, such as the Government would be governed by the Constitution of which they are the creatures and the regulations which go to determine their mode of operation. Such possessory right is the residue of the estate and the interest which was created by the contract of the lease. This limited interest, which also was protected by the contract till the subsistence of the contractual lease is continued to be protected now by the statute. In spite of the respondent, ceasing to have an estate and interest of a lessee in the premises, after the determination of the lease, the bare possessory rights, as distinguished from other larger rights acquired under the descriptive definition of Section 2(e) of the Act do not, in our opinion, undergo any material change whatsoever for the purposes of the Act.

20. It now remains to refer to the decision of the Supreme Court in yet another case of *Hiralal Vallabhram Vs. Kastorbhai Lalbhai and Others*, , striking slightly a discordant note, to which our attention was drawn very fairly by Mr. Chagla himself. The suit of the landlord for eviction against his three tenants, partners in a firm, and fourth defendant alleging him to be an unlawful sub-tenant, was decreed by the High Court in revision, only against the fourth defendant on the basis that defendants 1 to 3 ceased to have any interest after the termination of the contractual tenancy and the fourth defendant actually in possession was liable to be evicted as a trespasser, on his failure to prove assignment of tenancy to him as claimed by him. Tenants were also found to have been in arrears of rent. On appeal by the fourth defendant, the Supreme Court found it difficult to support such a decree against a trespasser alone in a suit under the Rent Act. The respondent-landlord tried, however, to support the decree saying that

defendant No. 4 was a subtenant and had become a tenant under S. 14 of the Act on the "determination" of the tenancy of defendants 1 to 3. Reliance was placed on a passage from *Anand Nivas (Private) Ltd. Vs. Anandji Kalyanji Pedhi and Others*, The Supreme Court rejected this contention even on the assumption that defendant No. 4 was a sub-tenant. The passage in *Anand Niwas*" case was explained by reference to another passage therein and it was further observed that the interest of the contractual tenant does not come to an end till he gives up possession or decree for eviction is passed against him and a sub-tenant cannot claim to have become the tenant u/s 14 of the Rent Act merely on the termination of the contractual lease of the head-tenant. Mr. Chagla appears to be right in contending that, observations should be confined to the effect of Section 14 only. Mr. Chagla also is right in saying that interest of the contractual tenant on the determination of contractual lease, being protected by Section 12, the sub-tenant cannot claim direct tenancy till such "interest" of the head-tenant also comes to an end. This only demonstrates how it is necessary not to read any observations in isolation.

21. Mr. Chagla then contends that the occupation of the petitioner under no circumstances can "be said to be "unauthorised" within the meaning of Section 2(g) of the Act. Mr. Chagla relies on the membership of the Society and allotment of the flat to him by the Society, He contends that the petitioner is in possession of the flat, not so much as the allottee of the Central Government, but as a member and allottee of the said Society. We are unable to accept this contention. After the determination of the contractual tenancy, the statutory tenancy of the flat still vests in the Garrison Engineer. The petitioner entered the flat as his allottee and has not surrendered possession even after cancellation of the allotment. The Society may accept the petitioner as its member and also may allot the shares to him and even may allot the flat to the petitioner legally. As far as the possession is concerned, the Society is incompetent to deliver possession thereof to the petitioner in disregard of the statutory tenancy of respondent No. 1 and the right to possession vested in it thereby. Interference with the possession of the statutory tenant even by the landlord is unlawful. Respondent No. 1 must be deemed to be in possession through its allottee the petitioner. The Society cannot claim to have delivered such possession to the petitioner nor recognised his possession otherwise in disregard of the statutory tenancy of respondent No. 1. The occupation of the petitioner after cancellation of allotment cannot but be unauthorised.

22. Mr. Chagla then contends that the conduct of the respondent operates as an estoppel. Now, what is relied on is the letter dated 12-7-1968 calling upon the petitioner to give a certificate that he would not seek any re-employment. The case of the petitioner is that such a certificate was given by him on 17-7-1968 in compliance with this letter. According to him, he had already resigned on account of this prematurely so as to make the resignation effective from 24-7-1968, though he could have remained in service for full three years from 18-4-1967 onwards. According to the petitioner, by calling upon the petitioner to undertake

not to seek re-employment, respondent No. 1 represented to him that his application for de-hiring will be granted. We do not see any merit in this contention. Neither asking for such certificate can be treated as promise or representation, nor giving such certificate can be said to be acting to one's detriment. The petitioner has not stated on what date he actually submitted his resignation. On our query, Mr. Kothari, the learned advocate appearing for the petitioner today, informed us that the resignation application was made in the month of May 1968, though the resignation was made effective from 24-7-1968. Apart from the fact that the letter dated 12-7-1968 does not constitute any representation or promise, application for resignation made in the month of May, 1968, cannot be said to have been made relying on any such representation. Secondly, all that the letter dated 12-7-1968 required of the petitioner is to furnish certificate. The affidavit sworn on behalf of respondent No. 1 indicates that, according to then instructions in force, applications for de-hiring could be considered only from those who had retired and were not going to be re-employed. There is no element of promise in the letter nor any representation. The certificate seems to have been demanded to facilitate the consideration of the application. In the meanwhile, the Army authorities appear to have decided not to consider such applications at all. By a circular dated 21-10-1969, this decision of the Army Headquarters was conveyed to every one, including the petitioner. There is thus no promise, no representation, and no relying and acting by the petitioner to his detriment. He cannot be said to have resigned relying on any such promise or representation.

23. Mr. Kothari then contends that the disposal of the eviction proceedings by the Estate Officer without waiting for the result of his de-hiring application is not in accordance with law. The contention appears to us to be devoid of any substance. The proceedings were initiated when the show cause notice was given on 20-1-1970. This was after the allotment was cancelled by the letter dated 14-1-1970. This letter refers to the circular letters of the Army Headquarters dated 31-10-1969 indicating that de-hiring applications were not liable to be considered, it is true that on the earlier occasion on 9-10-1968 the Army Headquarters had directed the stay of eviction proceedings. But then the effect of that letter must be deemed to have been wiped out by the circular letter dated 31-10-1969, a copy of which is shown to have been sent to the petitioner along with the letter dated 14-1-1970 cancelling the allotment. In his petition the petitioner says that the Estate Officer had stayed the proceedings sine die till disposal of de-hiring application, when he appeared before him on 10-6-1970 in response to the notice dated 20-1-1970. This is denied by the deponent in the affidavit sworn on behalf of the respondent. No attempt is made to enforce the production of any such order. Mr. Paranjape, however, made it clear that the said proceedings were never revived as in the meanwhile the judgment of the Supreme Court had made the validity of the Act itself doubtful and proceedings were started afresh by a notice dated 2-1-1971, after the present enactment was enforced. It is clear to us that there is no room for assuming that any de-hiring

application of the petitioner was pending consideration, after the decision of the Army Headquarters was made known to every one, including the petitioner, under its circular dated 31-10-1969. Instances of de-hiring cited in rejoinder by the petitioner do not indicate the dates thereof and cannot be relied on to suggest that such policy was liable to be relaxed. This apart, it is very difficult to hold that eviction proceedings would become in-fructuous because the application for de-hiring was under consideration. It was the duty of the petitioner to move the authorities concerned to stay the proceedings, if at all the authorities were found responsive to his application. Mere pendency of any such application is irrelevant unless proceedings are shown to have been initiated or disposed of by any incompetent officer. We have no reason to assume any such incompetency. If the authority was competent to initiate the proceedings, his competency to so initiate or the jurisdiction of the Estate Officer to so adjudicate, cannot be affected merely because the application of the petitioner was pending at some quarters.

24. Mr. Kothari then contends that the notice dated 2-7-1970 is bad because it relies on the letter cancelling the allotment dated 14-1-1970, in which the allotment is sought to be retrospectively cancelled with effect from 1-11-1968. We do not think it desirable to decide in this case whether the allotment can be so retrospectively cancelled or made effective, or not. Even if it is held that the allotment cannot be so cancelled retrospectively, we are unable to see why the cancellation of allotment cannot be effective, at any rate, from the date when the cancellation was communicated to the petitioner. We are also unable to see why the notice dated 2-7-1970 becomes bad merely because it refers to the cancellation of allotment having become ineffective from 1-11-1968. The Estate Officer is competent to proceed with the eviction proceedings on his satisfaction that the petitioner's occupation of the premises in dispute was unauthorised. The possession becomes unauthorised as soon as the petitioner ceases to be in service or, at any rate, when the possession is demanded from him and consent is withheld by the competent authority to continue the allotment. These bare features are sufficient to make the cancellation of the allotment effective from the date it was communicated to the petitioner as also the notice dated 2-1-1971 initiating proceedings against the petitioner.

25. It was also faintly suggested that the eviction order is bad because it also relies on the ground of non-payment of rent which is not the ground mentioned in the show cause notice. There is hardly any substance in this contention. If the order is read as a whole, it cannot be said that eviction order is passed due to failure of the petitioner to pay rent. Merely because reference is made to such failure, the order cannot be said to have been based on such failure.

26. There is thus no merit in the petition.

27. Rule is accordingly discharged.

28. There will be no order as to costs.

29. The order not to be given effect to up to 17th September, 1976, in view of the undertaking given by the petitioner to this Court.

30. Mr. Chagla applies for leave to appeal to the Supreme Court under Article 133 of the Constitution.

31. Leave refused.

32. Rule discharged.