

**(2001) 04 BOM CK 0040**

**In the Bombay High Court**

**Case No : Writ Petition No. 1595 of 1991**

Subhash Laxmidas Majithia

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

---

**Date of Decision : 30-04-2001**

**Acts Referred:**

Bombay Land Requisition Act, 1948 — Section 6(4)  
Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and  
Bombay Government Premises (Eviction) (Amendment) Act, 1996 — Section 15B, 5  
Constitution of India, 1950 — Article 14, 226  
Maharashtra Rent Control Act, 1999 — Section 27, 7(2)

**Citation :** (2001) 4 ALLMR 713 : (2002) 1 BomCR 272 : (2001) 4 BOMLR 150 :  
(2001) 4 MhLj 170

**Hon'ble Judges :** R.M. Lodha, J;D.B. Bhosale, J

**Bench :** Division Bench

**Advocate :** Shyam Mehta and Mukund B. Madekar, instructed by B.B. Madekar,  
for the Appellant; Pradeep Jadhav, Assistant Government Pleader, Gulam  
Vahanvati, General and P.G. Karande, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

R.M. Lodha, J.—By means of this writ petition filed under Article 226 of the Constitution of India, the petitioner initially prayed for issuance of writ of mandamus directing respondent No. 1 to withdraw the order of requisition dated 5th November 1955 in respect of the premises, viz, a room on the ground floor of the building known as "Patel Niwas", now known as Gomati Bhavan, situate at 2/E French Road, (Dr. Atmaram Rangnekar Marg), Mumbai 400 007, and restore possession thereof to the petitioner. Since during pendency of the writ petition, the Maharashtra Act No. XVI of 1997 and later on the Maharashtra Rent Control Act, 1999 were enacted, the petitioner by way of amendment to the writ petition, prays for declaring the said Maharashtra Act No. XVI of 1997 and section 27 of the Maharashtra Rent Control Act, 1999 as unconstitutional. We note here that although in the writ petition by way of amendment the petitioner also prayed for declaring the Constitution (44th Amendment) Act, 1978 as invalid and

unconstitutional, the learned counsel appearing for the petitioner did not press the said relief.

2. Before we examine the constitutionality of the Maharashtra Act No. XVI of 1997 and Section 27 of the Maharashtra Rent Control Act, 1999, we deem it proper to set out the relevant facts.

3. The petitioner is landlord in respect of a building aforesaid. By an order dated 5th November 1955, the Government, In exercise of its powers under the provisions of Section 6(4)(a) of the Bombay Land Requisition Act, 1948 (For short "Requisition Act"), requisitioned one room on the ground floor of the aforesaid building for public purpose, viz, for housing a Bombay State Government servant. The said premises were allotted to respondent No. 2 in his capacity as a State Government servant by an order undated (Exhibit-B). It is petitioner's case that the first respondent cannot hold the requisitioned premises for indefinite period and continuance of the requisitioned premises for inordinate length of more than 45 years is bad in law.

4. In H.D. Vora v. State of Maharashtra and others. the Apex Court in para 4 of its judgment, observed thus :

"5. .... Here in the present case the order of requisition was made as far back as 9th April 1951 and even if it was made for housing a homeless person and the appellant at that time fell within the category of homeless person, it cannot be allowed to continue for such an inordinately long period as thirty years. We must therefore hold that the order of requisition even if it was valid when made, ceased to be valid and effective after the expiration of a reasonable period of time. It is not necessary for us to decide what period of time may be regarded as reasonable for the continuance of an order of requisition in a given case, because ultimately the answer to this question must depend on the facts and circumstances of each case but there can be no doubt that whatever be the public purpose for which an order of requisition is made, the period of time for which the order of requisition may be continued cannot be an unreasonably long period such as thirty years ...."

5. H. D. Vora's case and other judgments were considered by the Apex Court in Grahak Sanstha Manch and others v. State of Maharashtra, and the Constitutional Bench of the Apex Court headed by the then Chief Justice in para 17 of the report ruled that the continuance of an order of requisition for as long as 30 years was unreasonable.

"17. For the aforesaid reasons, we hold that the decision in H. D. Vora case does not require reconsideration. We, however, do not approve the observations therein that requisition orders under the said Act, cannot be made for a permanent purpose. We make it clear that the said decision does not lay down, as has been argued, a period of 30 years as the outer limit for which a requisition order may continue. The period of 30 years was mentioned in the decision only in the context of the date of the requisition order there concerned.

An order of requisition can continue for a reasonable period of time and it was held, as we held, that the continuance of an order of requisition for as long as 30 years was unreasonable."

6. In the light of the consistent view of the Apex Court that the continuance of requisition for more than 30 years is unreasonable, no doubt is left that the requisition of the premises in question which was effected vide order dated 5th November, 1955 cannot be allowed to continue for inordinate length of more than four decades.

7. However, the State Government enacted the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996 (for short, Maharashtra Act No. XVI of 1997). By the said Act, the Maharashtra Legislature amended the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the Bombay Land Requisition Act, 1948 and the Bombay Government Premises (Eviction) Act, 1955. By the Maharashtra Act No. XVI of 1997, the premises in occupation of an allottee or his or her legal heir occupying the premises was conferred status of deemed tenant. In other words, the said allottee or his or her legal heir under the said Act is deemed to have become tenant for the purpose of the Bombay Rent Act, 1947. The constitutionality of the Maharashtra Act No. XVI of 1997 was challenged in a group of petitions before this Court. The said group of petitions, viz. *Ranjit Premjibhai Gohil v. State of Maharashtra and Ors.*," was decided by the Division Bench of this Court on 27th July 1998. The said judgment is reported in *Vide the Maharashtra Act No. XVI of 1997 in Section 5* after clause (1), clause (1A) defining "Government allottee", was inserted. In clause (3) of section 5 at the end, after the words "such licence" the words, brackets, figures and letters "and in respect of the State Government, or as the case may be, the Government allottee referred to in sub-clause (b) of clause (1A) deemed to be a tenant by section 15B, the person who was entitled to receive the rent if the premises were let to a tenant immediately before the coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996". was inserted. After clause (8A), clause (8B) was inserted and after section 15A, the new section 15B was inserted. Amendments were also made in section 9 of the Land Requisition Act, 1948. The constitutionality of the said Act was attacked on diverse grounds but principally challenge was on the grounds viz. (a) the State Legislature is not competent to enact the Impugned Act and the said Act is a colourable legislative power; (b) the said enactment is a blatant encroachment upon judicial directions given by the Apex Court and is also aimed to retrospectively modify the orders passed by this Court as well as the Supreme Court and (c) the impugned Act is unreasonable, arbitrary and unjustified, hence violative of Article 14 of the Constitution. While dealing with the first attack of lack of legislative competence, the Division Bench referred to Article 246 of the Constitution of India, at Entries 6, 7 and 13 of List HI of the Seventh Schedule of the Constitution, Entry 18 of

List II of the Seventh Schedule and various judgments of the Apex Court and ultimately held that the impugned Act suffered from legislative competence. As regards the contention that the impugned Act is a blatant encroachment upon judicial directions given by the Apex Court, the Division Bench did hold so after considering the judgments of the Apex Court in H. D. Vora and Grahak Sanstha Manch. On the aforesaid two grounds, the Division Bench accepted the contentions of the petitioner assailing the constitutionality of Act No. XVI of 1997 and in para 39 of the report held thus :

"39. For the reasons stated above, we accept the contentions raised by the petitioner that -

(1) The Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996 (Act No. XVI of 1997) is not covered by Entries 6 and 7 of List III of the Constitution of India, and hence it is beyond legislative competence, void and inoperative.

(2) The said Act seeks to nullify the directions given by the Apex Court in H. D. Vora v. State of Maharashtra & Ors., and Grahak Sanstha Manch and Ors. v. State of Maharashtra, without changing the basis of the said two judgments."

7A. The learned Advocate General submitted that the Division Bench's Judgment of this Court In Ranjit Premjibhai Gohil is under challenge before the Apex Court in Civil Appeal Nos. 5168, 5169, 5170 of 1998 and several other matters. He Invited our attention to the order passed by the Apex-Court while granting leave. The said order reads thus :-

Civil Appeal Nos. 5168, 5169, 5170 of 1998 in SLP (C) No. 15377/98, 15788/98 and 16183/98 leave granted. Printing dispensed with. Hearing expedited.

It will be open to the parties to mention before the first Court for fixing a date of hearing of these appeals. Pending hearing and final disposal of these appeals interim stay as to dispossession is granted. The stay is granted on the condition that the allottees who have been made tenant under the impugned legislation shall file an undertaking before this Court that in case they lose in these appeals they will pay monthly compensation at such rate as may be determined by this Court for the premises in their possession. The allottees shall file their undertakings within eight weeks from today."

8. The Maharashtra Rent Control Act, 1999 (Mah Act XVIII of 2000) came into effect from 31.3.2000. Section 7(2) which defines "Government allottee" reads thus :

"(2) "Government allottee", -

(a) in relation to any premises requisitioned or continued under requisition which are allotted by the State Government for any non-residential purpose to any Department or office of the State Government or Central Government or any

public sector undertaking or corporation owned or controlled fully or partly by the State Government or any Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 or any foreign consulate, by whatever name called, and on the 7th December, 1996, being the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996, were in their occupation or possession, means the principal officer-in-charge of such office or department or public sector undertaking or corporation or society or consulate; and

(b) in relation to any premises requisitioned or continued under requisition which were allotted by the State Government for residential purpose to any person and on the 7th December 1996, being the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996, such person or his legal heir was in occupation or possession of such premises for his or such legal heir's own residence, means such person or legal heir;"

Section 27 of the Maharashtra Act XVIII of 2000 which is relevant is extracted below :

"27 State Government or Government allottee to become tenant of premises requisitioned or continued under requisition.

(1) On the 7th December 1996, this is the date of coming into force of the Bombay Rents, Hotel and Lodging Houses Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996 (hereinafter in this section referred to as "the said date"),-

(a) the State Government, in respect of the premises requisitioned or continued under requisition and allotted to a Government allottee referred to In sub-clause (a) of clause (2) of section 7; and

(b) the Government allottee, in respect of the premises requisitioned or continued under requisition and allotted to him as referred to In sub-clause (b) of clause (2) of section 7, shall, notwithstanding anything contained in this Act, or in the Bombay Land Requisition Act, 1948, or in any other law for the time being in force, or in any contract, or in any Judgment, decree or order of any Court passed on or after the 11th June, 1996, or in any order of eviction issued by the Competent Authority, or by the Appellate Authority, under the Bombay Land Requisition Act, 1948, be deemed to have become, for the purpose of this Act, the tenant of the landlord; and such premises shall be deemed to have been let by the landlord to the State Government or, as the case may be, to such Government allottee, on payment of rent and permitted increase equal to the amount of compensation payable in respect of the premises immediately before the said date.

(2) Save as otherwise provided in this section or any other provision of this Act,

nothing in this section shall affect, -

(a) the rights of the landlord including his right to recover possession of the premises from such tenant on any of the grounds mentioned in section 16 or in any other section;

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

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

9. After comparing section 7 with clause 1A of section 5 which was inserted by the Maharashtra Act No. XVI of 1997, we find that both the provisions are exactly Identical whereby status of deemed tenants, has been conferred on the government allottee or his heirs in occupation of the requisitioned premises. Section 27 of the Act XVIII of 2000 is also exactly identical with Section 15(B) of the Act No. XVI of 1997. As a matter of fact, learned Advocate General did not dispute the position that the provisions contained in clause 1A of section 5 after amendment and section 15B are exactly identical with section 7(2) and 27 of Act XVIII of 2000. In view of the considered Judgment of the Division Bench of this Court in Ranjit Premjibhai Gohil (supra) holding that the Maharashtra Act No. XVI of 1997 is not covered by Entries 6 and 7 of List III of the Seventh Schedule of the Constitution of India and hence it is beyond legislative competence Is clearly applicable to section 27 of the Act XVIII of 2000 and for the selfsame reasons which have given by the Division Bench in Ranjit Premjibhai Gohil, we have no hesitation in holding that section 27 of Act XVIII of 2000 suffers from legislative competence since the power exercised by the said Legislature in enacting the said section is not covered by Entries 6 and 7 of List III of Seventh Schedule of the Constitution of India and, therefore. Section 27 is void and inoperative. Since we are adopting the reasoning given by the Division Bench in Ranjit Premjibhai Gohil, we have not burdened this judgment with the constitutional provisions and Entries in details and the judgments of the Apex Court in support of our conclusion that the impugned provisions contained in section 27 of the Maharashtra Act XVIII of 2000 is void and inoperative due to lack of legislative competence. The other reason given by the Division Bench for holding the Maharashtra Act XVI of 1997 void and inoperative, since by the said Act, it was sought to nullify the directions given by the Apex Court in H. D. Vora and Grahak Sanstha Manch without changing the basis of the said Judgment, is also squarely applicable to the present provisions contained in Section 27 of Act XVIII of 2000 and consequently Section 27 is rendered void and unconstitutional. We may note here that in response to the present writ petition after the constitutionality of the Act XVI of 1997 and Act XVIII of 2000 was challenged, no return has been filed which could indicate the reasons changing the basis of the said two judgments of the Apex Court in H. D. Vora and Grahak Sanstha Manch. It is thus clear that

without changing the basis of the said two judgments of the Apex Court viz. H. D. Vora and Grahak Sanstha Manch by Section 27 of Act XVIII of 2000, the directions given by the Apex Court in the two judgments are being nullified which Is not permissible and that renders the Maharashtra Act XVIII of 2000 also bad-in law, inoperative, ultra vires and non est.

10. We, accordingly, declare section 27 of the Maharashtra Act No. XVIII of 2000 unconstitutional, ultra vires, non est and inoperative for lack of legislative competence and also for the reason that it seeks to nullify the directions given by the Apex Court in H. D. Vora and Grahak Sanstha Manch without changing the basis of the said two judgments.

11. In the result, the writ petition is allowed. The Maharashtra Act No. XVI of 1997 and Section 27 of Maharashtra Act No. XVIII of 2000 are declared ultra vires the Constitution of India and non est. The continuance of requisition of the premises in question for more than 45 years is also declared bad in law. The respondents are directed to hand over vacant and peaceful possession of the premises in question to the petitioner within three months from today.

12. Rule Is made absolute in the aforesaid terms.

13. No costs.

14. Certified copy expedited.