

**(1996) 02 BOM CK 0004**  
**In the Bombay High Court**  
**Case No : Writ Petition No. 1075 of 1993**

Taher Ali and Others

APPELLANT

Vs

Shri Shivaji Education Society and Others

RESPONDENT

**Date of Decision :** 03-02-1996

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (1996) 4 BomCR 333 : (1996) 98 BOMLR 37 : (1996) 1 MhLj 931

**Hon'ble Judges :** R.M. Lodha, J

**Bench :** Single Bench

**Advocate :** J.M. Chandurkar, for the Appellant; M.W. Sambre, for Respondents 1 to 13, for the Respondent

**Final Decision :** Allowed

## Judgement

R.M. Lodha, J.—Rule, returnable forthwith. Mr. N.W Sambre, Advocate waives service on behalf of the respondents. At the request of the learned Counsel for the parties, writ petition is finally heard and disposed of at this stage.

2. By this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioners are seeking to challenge the legality and correctness of the order passed by the Resident Deputy Collector, Amravati on 4-11-1992 affirming the order passed by the Rent Controller, Amravati on 13-7-1990 whereby the said authorities rejected the application filed by the present petitioners raising objection as regards the tenability of application under Clause 16 of the C.P. & Berar Letting of Premises and Rent Control Order, 1949 (for short, the "Rent Control Order, 1949") filed by the present respondents.

3. The undisputed facts are, the petitioners (for short, the "landlords") are owners of house property situated on Mazul Plot No. 1, Sheet No. 21, Amravati along with open site and the said premises were let out to the respondent No. 1 Shri Shivaji Education Society (for short, the "tenant") by the father of the present landlords. The landlords moved application before the Rent Controller,

Amravati seeking permission to issue quit notice to the tenant and the Rent Controller, Amravati granted such permission on 7-12-1986. Admittedly, the landlords issued notice to quit to the tenant on 8th April, 85 and according to the said notice, the tenancy of the tenant was to come to an end on expiry of tenancy month of May, 1985. There is no dispute that the permission granted to the Rent Controller to issue quit notice to tenant has attained finality right upto the Apex Court and the appeal, writ petition, letters patent appeal and SLP filed by the tenant has been dismissed by the Appellate Authority, the Single Bench, the Division Bench of this Court and the Supreme Court respectively.

4. On 5-9-1989, the tenant made an application before the Rent Controller under Clause 16 of the Rent Control Order, 1989 praying therein that the landlords have failed to make necessary repairs to the house let out to the tenant and appropriate order be passed in that connection. The landlords were noticed and upon receipt of the notice, the landlords made an application raising preliminary objection about the maintainability of the application under Clause 16 of the Rent Control Order, 1949 on the ground that the relationship of the landlord and tenant came to an end on expiry of month of May, 1985 as mentioned in the notice to quit dated 8-4-1985 and the occupation of the tenant thereafter was that of a trespasser and, therefore, the application under Clause 16 was not maintainable. The application filed by the landlords has been rejected by the Rent Controller by the order dated 30-7-1990 and the appeal filed by the landlords before the Resident Deputy Collector, Amravati met the same fate and by the order dated 4-11-1992, the appellate authority has upheld the order of the Rent Controller, Amravati.

5. Mr J.K. Chandurkar, the learned Counsel for landlords, contends that after permissions was granted by the Rent Controller the tenancy of the tenant was terminated by the quit notice dated 8th April, 1985 and pursuant thereto the tenancy of the tenant came to an end on the expiry of May, 1985 and thereafter, there was no relationship of landlord and tenant and, therefore, the application filed under Clause 16 of the Rent Control Order, 1949 was not maintainable.

6. The facts stated above are not disputed by the learned Counsel for tenant. But his contention is that though the tenancy came to an end by the notice dated 8-4-1985 on expiry of tenancy month of May, 1985, yet since till date no decree for possession has been passed in favour of the landlords, status of the tenant continues to be the status as such and, therefore, application under Clause 16 of the Rent Control Order, 1949 was maintainable and relationship of the landlord and tenant had not come to an end.

7. Clause 16 of the Rent Control Order, 1949 reads as under:---

"16 (1) If a landlord fails to make necessary repairs to a premises, electric installation or water connections within a reasonable time after notice given by the tenant, the Controller may, by an order made on application by the tenant containing, inter alia, an approximate estimate of expenses required for the

repairs, direct that such repairs as may be specified in the order, may be made by the tenant and the cost thereof deducted from the rent payable by him to the landlord.

(2) If the Controller, on an application by the tenant, is satisfied that the premises requires repairs urgently, he may, after due notice to the landlord, direct that such repairs, as may be specified in the order, may be made by the tenant and the costs thereof deducted from the rent payable by him to the landlord.

(3) No application under sub-clause (1) or sub-clause (2) shall be entertained by the Controller from a tenant who is in arrears of rent for an aggregate period of three months."

8. A plain reading of the said clause makes it abundantly clear that relationship of landlord and tenant is condition precedent before an application contemplated under Clause 16 could be maintained by the tenant. It is only if the relationship of landlord and tenant subsists and the landlord fails to make necessary repairs to the house let out to the tenant, electric installation or water connections within the reasonable time after notice is served by the tenant, the Rent Controller is empowered to pass an appropriate order on the application by the tenant. If there is no relationship of landlord and tenant between the parties, obviously there is no obligation on the ex-landlord to make repairs to house which is in possession of party, not as tenant but a trespasser. The tenant has a right to have the premises let out to him in proper condition so long as he continues as tenant but once the tenant loses his status as tenant on termination of tenancy or that the relationship of landlord and tenant comes to an end by determination of the tenancy in accordance with law, the ex-tenant cannot invoke the provisions of Clause 16 even if he continues to be in possession of the property after his tenancy has come to an end in accordance with law, albeit decree for possession has not been passed against him. Once the tenancy of tenant is determined, he ceases to be the tenant and his status as tenant comes to an end and his occupation of the property in question becomes that of a trespasser and accordingly, he cannot be said to be entitled to the benefits of the Rent Control Order, 1949. I am fortified in my view by the judgment of this Court in *Kesardeo Bajaj v. Nathmal Goenka* 1965 Mh.L.J. 688, wherein this Court held that after termination of tenancy, the tenant becomes trespasser and he is no longer entitled to the privileges available to the tenants under the Rent Control Legislation. By necessary implication after the tenancy has been determined, if the ex-tenant continues in possession since no decree for possession has been passed, he cannot claim any benefit or privilege under the Rent Control Order, 1949 which only governs the rights and liabilities of the landlord and the tenant and so long as the relationship of landlord and tenant subsists and not after the same has come to an end.

9. Admittedly, the permission was granted by the Rent Controller to the landlord to issue quit notice to the tenant in the year 1984 and pursuant to the said

permission, landlord issued quit notice to the tenant on 8th April 1985, and according to the said notice, the tenancy has come to an end on expiry of month of May, 1985. Thus, after May, 1985, there was no relationship of landlord and tenant between the parties and the application filed by the ex-tenant projecting himself to be tenant and claiming benefit under Clause 16 was wholly misconceived and the Rent Controller and the Resident Deputy Collector committed serious error in not allowing the objection raised by the landlords that such application filed by the tenant was not maintainable and could not be entertained.

10. Upshot of the aforesaid discussion is that the writ petition filed by the landlords deserves to be allowed and is hereby allowed. The orders passed by the Resident Deputy Collector, Amravati on 4-11-1992 and the Rent Controller, Amravati on 30-7-1990 are quashed and set aside. The application under Clause 16 of the Rent Control Order, 1949 is rejected. No costs, Rule is made absolute in the aforesaid terms.