
(1971) 09 BOM CK 0007

In the Bombay High Court

Case No : Miscellaneous Petition No. 466 of 1966

Tham Chew Chong

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 06-09-1971

Acts Referred:

Bombay Land Requisition Act, 1948 — Section 4(3), 6(4)(a)

Citation : (1976) 78 BOMLR 613

Hon'ble Judges : Chandrachud, J

Bench : Single Bench

Judgement

Chandrachud, J.—The petitioner No. 1 and her mother, the petitioner No. 2, are owners of two adjoining flats in a building called "Navyug Nivas", at Lamington Road, Bombay. They purchased the flats from "Messrs. Navyug Builders" and secured possession thereof in 1962. Soon thereafter, the various flat owners in the building formed a Co-operative Housing Society called "Navneet Co-operative Housing Society Limited".

2. The petitioner No. 1 left for Hongkong in June 1963. In March 1964, a part of flat No. 46-B, belonging to her, was given on a leave and licence basis to two persons: Adi Jehangir Irani and H. Ahmed. On July 29, 1964, the Accommodation Officer of the respondents the State of Maharashtra issued a notice to the petitioners and to the licensees, calling upon them to show cause why flat No. 46-B should not be requisitioned under the Bombay Land Requisition Act, 1948, herein called "the Act". The petitioner No. 2 appeared before the Accommodation Officer and filed a written statement saying, inter alia, that the flat had not fallen vacant at any time, that the two licensees were permitted to occupy a portion of the flat for a brief while only and that the two adjoining flats were purchased by the petitioner No. 2 for the use of all the members of her family. On October 8, 1964, the Accommodation Officer wrote a letter to petitioner No. 1 saying that he had come to the conclusion that it was a fit case for requisitioning the flat. On September 13, 1966 the impugned order was passed stating that on inquiry it

was found that flat No. 46-B had become vacant in the month of June 1963 and requisitioning the flat in the exercise of powers conferred by Section 6(4)(a) of the Act, for the public purpose of housing a Maharashtra State Government Servant. On September 21, 1966, another order was passed u/s 11(1) of the Act, authorising an Inspector in the office of the Controller of Accommodation to take possession of the flat. The execution, of that order was stayed by this Court while admitting this petition. The petitioner No. 2 had preferred an appeal to the Secretary to the Government of Maharashtra, Revenue & Forests Department, but by a letter dated October 7, 1966 she was informed that the Government did not consider it necessary to cancel the requisition order.

3. Mr. Chinoy, who appears on behalf of the petitioners, contends that Section 6(4)(a) of the Act under which the requisition order was passed, has no application because the flat in question is not "premises" within the meaning of the Act. This submission, in my opinion, is well-founded and must be accepted. Section 6(4)(a) provides, to the extent it is material, that the State Government may by order in writing "requisition the premises for any public purpose". The word "premises" is defined in Section 4(3) to mean "any building or part of a building let or intended to be let...." It is therefore clear that an order of requisition can be passed u/s 6(4)(a), only in respect of a building or part of a building which is "let or intended to be let".

4. It is not alleged, much less shown, that flat No. 46-B was ever let to any one. In paragraph 13 (c) of the petition, there is a specific averment that the flat was neither let nor intended to be let. In paragraph 13 (e) it is stated that the petitioners were in possession of the flat as owners and the flat was neither let nor was it intended to be let. In regard to these averments, all that the Accommodation Officer has stated in his reply affidavit is that "it is denied that the said premises are not premises within the meaning of Section 4(3)" of the Act. What is more, it is stated in paragraphs 7, 8 and 24 of the reply affidavit itself that the flat was permitted to be occupied by licensees.

5. But this is not enough to invalidate the order. The flat may not have been let in fact and may still have been intended to be let, in which case it would be "premises" within the meaning of Section 4(3). In this connection Mr. Dalal, appearing for the respondents, relies on the bye-laws of the Navneet Co-operative Housing Society Limited and argues that under the bye-laws, the title to the building vests in the society, the society had let out the building to the various "tenant-owners" and since the whole building was intended to be let and was in fact let by the society to tenant-owners, flat No. 46-B which is a part of the building must partake of the same character and must be held to have been intended to be let. It is not possible to accede to this contention. It is true that under the bye-laws of the society, the title to the building as a unit, vests in the society, but the jural relationship between the society and the "tenant-owners" is not that of landlord and tenant. The petitioner No. 1 had paid the entire price of the flat to Navyug Builders who had constructed the building and the title to the

flat vests in her. It is as a matter of corporate convenience that Co-operative Housing Societies adopt the model bye-laws, in which, somewhat loosely, the society is termed as the "lessor" and the owners of the flats as "lessees".

6. In *Manohar Ramchandra Sarfare Vs. The Konkan Co-operative Housing Society Ltd. and Others*, a Full Bench of this Court had to consider identical bye-laws, on the basis of which it was contended there that the relationship between the society and its members was that of landlord and tenant. While rejecting this argument, the learned Chief Justice who delivered the judgment of the Full Bench observed (p. 1005) :

...This argument overlooks the basis on which co-operative societies are formed and worked and the by-laws and regulations.... The use of the words "tenant" and "tenancy" in the by-laws and regulations would not by themselves be sufficient to indicate that they are used in these by-laws and regulations in the same sense in which they are used either in the Transfer of Property Act or in the Rent Act.

The learned Chief Justice after a consideration of the various aspects of the relationship between the society and its members observed (p. 1006) :

Even though, therefore, a member, to whom a tenement is given for occupation, is described in the by-laws and the regulations as a tenant, he is not a tenant in the sense in which this term is used in the Transfer of Property Act or in the Rent Act, nor is the Society his landlord.

7. It is therefore clear that though in the bye-laws the society has been described as a landlord and its members as tenants, the relationship between the society and its members is not that of landlord and tenant. Consequently, it cannot be said that the flat was "let or intended to be let".

8. Apart from this legal aspect, I see nothing on the record to justify the view that the flat was ever "intended to be let". I have already adverted to how the specific averments made in the petition in this behalf are but barely denied by the respondents and how the reply affidavit of the Accommodation Officer itself says that the flat was permitted to be occupied by "licensees". The important circumstances attendant upon the grant of this licence are these: The two licensees were in occupation of a portion of the flat for a short period of three or four months. There is an inter-connecting door between the flat of the petitioner No. 1 and that of petitioner No. 2 and several pieces of furniture belonging to petitioner No. 1 were lying in that portion of the flat which was permitted to be occupied by the licensees. The remaining part of flat No, 46-B was in the use and possession of petitioner No. 2, on behalf of petitioner No. 1. The record shows that the particular portion of the flat which was given on a leave and licence basis was not in the exclusive possession of the licensees. These circumstances, in my opinion, militate against the inference that the flat was intended to be let.

9. As the flat was neither let nor intended to be let, it is not "premises" as

defined in Section 4(3) of the Act and consequently it cannot be requisitioned u/s 6(4)(a) of the Act.

10. Accordingly, I set aside the order of requisition dated September 13, 1966 and make the rule in the petition absolute with costs.