

(1950) 04 BOM CK 0003

In the Bombay High Court

Case No : O.C.J. Application No. 15 of 1950, Miscellaneous Application No. 230 of 1949

The State of Bombay

APPELLANT

Vs

Virendra Motabhoy and Others

RESPONDENT

Date of Decision : 20-04-1950

Acts Referred:

Bombay Land Requisition Act, 1948 — Section 4(3), 6(1)

Citation : AIR 1951 Bom 175 : (1950) 52 BOMLR 627

Hon'ble Judges : Chagla, C.J.;Shah, J

Bench : Division Bench

Advocate : C.K. Daphtary, General and G.N. Joshi, for the Appellant; V.F. Taraporewalla and P.N. Bhagwati for 1 to 3 and M.P. Laud, for 4, for the Respondent

Final Decision : Allowed

Judgement

Chagla, C.J.—This is an appeal from a judgment and order of Bhagwati J. by which he directed the issue of a writ of certiorari against the State of Bombay and set aside a requisitioning order made by Government.

2. The petitioners purchased a property called Motabhoy Mansion situated on Churchgate Reclamation towards the end of 1943, and one Mrs. Coultrup was a tenant of a flat on the first floor of that building. On 31-10-1947, the petitioners gave her a notice terminating her tenancy at the end of the next two months and the tenancy came to an end on 31-12-1947. But Mrs. Coultrup continued to occupy the flat as a statutory tenant right up to January 1949. In or about the second week of January 1949 she left the premises and one Kundanmal Mahatani went into possession. Government requested the petitioners to accept Mahatani as their tenant in place of Mrs. Coultrup because they said Mrs. Coultrup had exchanged this flat with Mahatani's flat in Karachi. The petitioners were not prepared to accept this arrangement whereupon Government issued an order u/s 6 (4), Bombay Land Requisition Act, 1948, requisitioning these premises and

directing the petitioners to let these premises to Mahatani. It is this order that is being challenged.

3. Now, in order to understand what the rival contentions of the parties are and also the judgment of the learned Judge below, it is necessary to look at the scheme of the Requisitioning Act which is Act XXXIII [33] of 1948. By Section 2 the Act is extended to the areas specified in the schedule to the Act and in the schedule the city of Bombay, Bombay Suburban District and other districts are mentioned, and the Act came into force on 11-4-1948. Then by Sub-section (2) of Section 2 the Provincial Government have been given the power to extend any or all of the provisions of the Act to any other area by notification in the Official Gazette. Section 4 deals with the definitions and I shall deal with the material definitions presently. Section 6 deals with the power of Government to requisition land. We are not concerned with that section in this case. Then we come to Section 6 which is a material section, and that section deals with requisition of vacant premises. I may point out that there is a drafting error in Section 6 (1) because it refers to premises situated in the area specified by the Provincial Government by notification in the Official Gazette, and it does not refer to the areas specified by the Act itself u/s 2 (1). But it is clear that the object of the Act was to apply Section 6 both to areas covered by Section 2 (1) and areas covered by Section 2 (2). The error arises because this Act took the place of an earlier Ordinance and under that Ordinance the Ordinance could only be applied to the areas specified in the Official Gazette, whereas the scheme of Section 2 of the Act is different. Now, u/s 6 (1) an obligation is cast upon the landlord to give intimation with regard to vacancies to an officer authorised in that behalf by the Provincial Government, and that obligation is cast only with regard to premises as defined in the Act and premises which are in the area specified in the Act, and that obligation arises when these premises become vacant. These premises may be vacant at the date when the Act comes into force, or they may become vacant subsequently and that vacancy may come about by reason of the landlord, the tenant or the sub-tenant, as the case may be, ceasing to occupy the premises, or they may become vacant by reason of the release of the premises from requisition or by reason of the premises being newly erected or reconstructed or for any other purpose. Obviously, a premises which is newly constructed cannot become vacant and in order to get over this difficulty an explanation is appended to this section by which premises newly erected or reconstructed shall be deemed to be or become vacant until they are first occupied after such erection or construction. It is not with regard to every building that u/s 6 (1) there is an obligation upon the landlord to give intimation of a vacancy to the Provincial Government. It is only with regard to those buildings which fall in the category of premises, and "premises" is defined by Section 4 (3) as "any building or part of a building let or intended to be let separately." Therefore it is only those buildings or parts of buildings which are let or which are intended to be let that constitute premises and in respect of which an obligation is cast upon the landlord when such premises become vacant. Then u/s 6(2) the time within which intimation

has to be given by the landlord is laid down. He has got to give the intimation within one month in the case of premises which were vacant at the date when the Act came into force and in other cases within seven days of the premises becoming vacant. Then Section 6 (3) casts a disability upon the landlord, and that is that he cannot let, occupy or permit to be occupied premises which have become vacant before giving the intimation and for a period of one month from the date that intimation was received. After the expiry of that one month the landlord would have the right to make such use of the premises as he thinks fit. Then we come to Section 6 (4) which confers upon the Government the power to issue a requisitioning order, and that sub-section provides :

"Whether or not an intimation under Sub-section (1) is given and notwithstanding anything contained in Section 5, the Provincial Government may, by order in writing--(a) requisition the premises and may use or deal with the premises in such manner as may appear to it to be expedient; or (b) require the landlord to let the premises to specified persons or class of persons or in specified circumstances."

Then there is a proviso which gives the power to Government to declare a vacancy. There is a farther proviso which makes it incumbent upon the Government to hear the landlord before an order under Sub-section (4) (b) is made; and Sub-section (5) is a penal section imposing certain penalties upon a landlord who does not carry out the provisions of the Act.

4. Now, the power of Government to issue a requisitioning Order 13 restricted to premises situated in the area referred to in the Act and which premises become vacant. Therefore, in order to justify an order of requisition the Government would have to satisfy the Court that there was a vacancy in a building or a part of the building which was let or which was intended to be let and that such a building was situated in an area to which the Act had been applied. In this case the building is situated in an area to which the Act applies and there is no doubt that there was a vacancy when Mrs. Coultrup gave up possession. The only question that we have to consider is whether this was a building or a part of a building which had been let or which had been intended to be let. I agree with Mr. Taraporewalla that the learned Judge below was right when he came to the conclusion that the flat occupied by Mrs. Coultrup was not let to her in the second week of January 1949 when she vacated. As I have stated before, the contractual tenancy came to an end on 31-12-1947, and thereafter she continued as a statutory tenant, her possession being protected by the Rent Restriction Act. But this possession of Mrs. Coultrup was a personal right given to her by the statute. It did not create in her any right in property. It was not a right which she could assign or deal with and no relationship of landlord and tenant was created between her and the landlord. The expression "let" used in the Requisition Act must mean that the nature of possession is such as to create in the person to whom the building is let an interest in property. If a building or a part of a building is let to a person, he is a tenant case the person who lets the

building or part of the building to him, and if the relationship of landlord and tenant is absent and if no interest in property is created in the person who is in possession of the building, then it cannot be said that the building or part of the building is let to him. Therefore it could not be said of this flat that it was let to Mrs. Coultrup. All that could be said was that she was in possession and that possession was protected by the Rent Restriction Act. But to be in possession of a building is very different from being a tenant in the building, and as I said before no relationship was created as between her and the landlord.

5. But the difficulty in this case arises as to the interpretation of the second part of the definition of "premises", and the question is whether it could be said of this flat that it was intended to be let. The Advocate General has argued that "intended to be let" means "capable of being let" and according to him any building or part of a building which could be let out to a tenant would be a building of which it could be said that it was intended to be let. I am unable to accept that contention. The Legislature has advisedly used the expression "intended" and we must give to it its plain grammatical meaning. The word "intended" must import a volition ; a volition on the part of the landlord. But in my opinion, that volition cannot be a fluctuating or an ambulatory volition. If a volition is once expressed by the owner or the landlord quae a building, then that volition becomes an incident of the building itself, and it is not open then to the landlord by changing his intention from time to time to say that the particular building was not intended to be let. It should be noted that the Legislature has not used the expression "building or part of building let or which the landlord intends to let." The Legislature has deliberately used the expression "intended to be let" as an expression qualifying "building". Therefore the expression "intended to be let" is a characteristic or an incident of the building. It is perfectly true that that characteristic or incident is to be determined by the volition of the landlord, but it is not to be determined from time to time. What is argued before us by Mr. Taraporewalla is that the relevant date when it must be determined as to whether the building was intended to be let is the date when the vacancy occurs. I entirely agree because it is only if a building is intended to be let that it is "premises" and it is only that building in respect of which the Government can issue a requisitioning order. If when a building becomes vacant it is not "premises" then the Government cannot exercise their power. But in order to determine whether a building is intended to be let when it falls vacant it is immaterial what the intention of the landlord was at that moment. What is material is whether the incident, viz., intended to be let, is attached to the building at the time when the vacancy takes place; and whether a building is intended to be let or not is a question of fact to be determined by the circumstances of the case and the evidence in the case.

6. Now, in this case it is perfectly clear that this particular flat not only was intended to be let but was actually let to a tenant, and therefore when the vacancy occurred it could be postulated of this flat that it was a flat which was intended to be let. The flat did not cease to be intended to be let merely because

when the vacancy occurred the landlord expressed his intention that he did not want to let it but wanted to occupy it himself. I should like to draw attention again to Section 6 (3) which makes it clear that a landlord is not permitted to occupy, let or permit to be occupied any premises which fall vacant without giving intimation to Government. If it was open to the landlord lay his intention at the moment when the vacancy occurs to occupy the premises without any permission of Government, then to a large extent Section 6 (3) would be rendered nugatory. The learned Judge has taken the view that inasmuch as the petitioners intended to occupy this flat for their own personal use and occupation, this flat when it became vacant was not intended to be let. I am prepared to accept the evidence on which the learned Judge has relied and the evidence shows that ever since the time when the petitioners purchased this property in 1943 they intended to occupy two flats out of the twelve flats which constituted this building, but as there were tenants in the building and as the tenants were protected under the Rent Restriction Act, they could not occupy any of the two flats, and therefore, according to the petitioners, when fortunately for them Mrs. Coultrup left one of the flats, they thought that now they could occupy at least that flat for their own personal use. But even accepting the evidence of the petitioners, all that it establishes is that a particular intention was formed by them when the vacancy occurred. That evidence does not show that this flat was not intended to be let. On the contrary, as I said before, the evidence clearly shows that the flat was intended to be let and in fact was let for a considerable period of time before the vacancy occurred. If the flat was intended to be let, the different intention shown by the landlord at the date of the vacancy did not and could not change the characteristic of the flat and did not make the flat one not intended to be let. In my opinion, therefore, the Government were within their rights in issuing the order of requisition in respect of this flat as it fell within the definition of "premises."

7. The result is that the appeal must be allowed and the order of the learned Judge set aside with costs throughout.

Shah J.

8. I agree.