

(1973) 07 BOM CK 0024

In the Bombay High Court

Case No : Special Civil Application No. 2206 of 1969

The State of Maharashtra

APPELLANT

Vs

N.M. Shah

RESPONDENT

Date of Decision : 06-07-1973

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 28, 4
Civil Procedure Code, 1908 (CPC) — Section 80
Constitution of India, 1950 — Article 226, 227

Citation : (1974) 76 BOMLR 369 : (1974) MhLj 589

Hon'ble Judges : Vaidya, J;Dudhia, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Vaidya, J.—The above special civil application under Articles 226 and 227 of the Constitution of India is filed by the State of Maharashtra praying for a writ of prohibition or any other suitable writ, direction or orders restraining and prohibiting respondents Nos. 1 and 2 and the Court of Small Causes, Bombay, from proceeding with R.A.E. Suit No. 5469 of 1966 filed by respondents Nos. 3 to 9 and for setting aside an interim injunction granted on April 17, 1969 by the Appellate Bench of the Small Causes Court.

2. The facts leading to the petition may be briefly stated as follows : The subject matter of dispute between the parties is Room No. 13 on the 2nd floor of a building known as Damodar Sadan situated at Plot No. 514, Lady Jamshedji Road, Mahim, Bombay. The premises were requisitioned by the Government of Bombay under the Bombay Land Requisition Act, 1948, on August 13, 1954. They were allotted to S.T. Gadre who was the husband of respondent No. 3 and who was at that time an employee of the Bombay State Government. Gadre lived in the premises from November 1954. In April 1962 he committed defaults in payment of compensation and he was ordered to vacate the premises, but he paid the arrears and the Government did not enforce the orders. Under the

arrangement with the Government the compensation payable by Gadre was rent which was due to the landlord. He was bound to pay it to the landlord every month as per letter dated February 14, 1955. In 1962 Gadre was appointed as the Personal Assistant to the then Chief Minister Shri Kannamwar. Though Gadre was to reside with the Chief Minister as part of his duty he was permitted to retain the premises in dispute by a letter dated December 28, 1962.

3. It appears that after the order of requisition the original owner of the premises Damji Manji sold it to respondent No. 10. In 1963 Shri Kannamwar died while he was Chief Minister. Thereafter Gadre applied to the department of accommodation that he may be permitted to accommodate his brother in the said premises. On December 23, 1963 Gadre was allowed to accommodate his brother on a purely caretaker basis until the end of 1967 or until his said brother was transferred out of Bombay or Thana. Gadre died on February 2, 1966. The Government then decided that the brother of Gadre should vacate the premises. The brother and the wife of Gadre, respondent No. 3, were, however, permitted to occupy the premises until the end of April 1966 as per letter of the Government dated April 7, 1966. Respondent No. 3 never asked the Government to allow her to stay in the premises. In April 1966, she made a representation to the State Government to permit her to occupy the premises as a direct tenant of the landlord on compassionate ground because two of her sons were in defence services. While admitting the above facts, the request was rejected by the Government firstly because the Government was of the view that the premises being requisitioned as a suppressed vacancy the landlord may not consent to the proposal and secondly because it was found that Gadre had constructed a bungalow at Irla Nalla at Andheri and respondent No. 3 was not in need of accommodation.

4. But respondent No. 3 continued to occupy the premises even after April 1966. An order was therefore passed on August 31, 1966 by the Accommodation Officer in exercise of the powers u/s 8B of the Bombay Land Requisition Act, 1948, directing respondent No. 3 to vacate the premises within 15 days from the date of the receipt of the order and deliver possession to the Government. But before the order could be executed, respondents Nos. 3 to 9 filed a declaratory suit being suit No. 5469 of 1966 in the Court of Small Causes at Bombay claiming that they were tenants protected by the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, because defendant No. 1 in that suit, the now landlady had accepted them as tenants and the plaintiffs had become direct tenants protected by the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. They also claimed an injunction restraining defendant No. 2, the Controller of Accommodation and defendant No. 8, the State of Maharashtra from evicting her from the suit premises. Immediately after filing of the suit, the plaintiffs took out a notice for interim injunction. The learned Judge of the Small Causes Court who heard the said notice dismissed it on September 20, 1967 firstly, because no notice was given to the Government u/s 80 of the Civil Procedure Code, and secondly, because the plaintiffs had not even pleaded that

the premises were derequisitioned by the Government and the mere fact that the plaintiffs wore in possession of rent receipts did not make a prima facie case for de-requisition.

5. The said order was challenged in appeal before the Appellate Bench of the Small Causes Court, who by their judgment and order dated April 17, 1969 set aside the order of the trial Court on the basis that there was prima facie evidence to show that there was an implied de-requisition by the Government firstly because the circulars issued by the Government showed that the Government had permitted the allottees to make contracts of tenancy with the landlords and secondly in view of the rent receipts wherein the amounts received from the plaintiffs were described as rent and not as compensation.

6. Feeling aggrieved by the said decision of the Appellate Bench, the State of Maharashtra and the Controller of Accommodation have filed the above petition contending that in the absence of derequisition order u/s 9 of the Bombay Land Requisition Act, 1948, the premises in question were exempted from the provisions of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, u/s 4(1) of that Act and hence the suit filed by the plaintiffs was not maintainable in the Small Causes Court u/s 28 of that Act. The petitioners have prayed for a writ of certiorari or any other suitable writ to quash and set aside the judgment and order of the Appellate Bench dated April 17, 1969 and also for a writ of prohibition restraining the Court of Small Causes, Bombay from entertaining or trying the said suit.

7. Mr. Gandhi the learned Counsel appearing for the respondents relied on the Government circulars and the rent receipts and contended that merely because there was no derequisitioning order u/s 9, it cannot be said that the plaintiffs were not tenants within the meaning of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. He also contended that respondent No. 10, the new landlady had no objection to the continuance of the plaintiffs as tenants in the premises and when the Government was permitting the Government servants to have direct tenancy in other cases, it would be legitimate to assume that prima facie the Government permitted the plaintiffs to have direct tenancy with, respondent No. 1.

8. The appellate Bench has considered the circulars and the rent receipts and has recorded its conclusions as follows :

It is common ground that Cadre's occupation of the premises commenced as an allottee of the Government, It is alleged in the affidavit of appellant No. 1 that when the Government adopted the policy of allowing the allottees to make contracts of tenancy with the landlords, Cadre, pursuant to that permission of the Government, made a contract of tenancy with respondent No. 1 and thereupon, he ceased to be an allottee of the Government. This alleged contract of tenancy between Cadre and respondent No. 1 is denied in the affidavit filed by Mr. Wagle on behalf of respondent Nos. 2 and 3. However, the Government policy

referred to above is not in dispute. The appellants have produced two specimens of circulars issued by the Government. The contents of these circulars are also not in dispute. One circular is of 1957 and the other is of 1959. It appears that during the intervening period the above policy of the Government was suspended, and then it was resumed as shown by the second circular. In substance, the circular requires an allottee to produce documents showing that the landlord is willing to accept him as his tenant. The appellants have also produced rent receipts passed by respondent No. 1 to the deceased Gadre. These receipts are Ex. C. The first receipt in this exhibit is for the payment of rent of July 1902. It is significant that no affidavit is filed by respondent No. 1. In our opinion, the fact that the Government had permitted the allottees to make contracts of tenancy with the landlords coupled with the rent receipts Ex. C. prima facie show that Gadre was accepted as a tenant of the premises in question. What is contended by Mr. Patel is that no contract of tenancy could be made until the premises were released from requisition and the appellants have not even alleged such release from requisition. It is true that in the affidavit of appellant No. 3, there is no specific allegation that the premises were derequisitioned by the Government, However, in our opinion, the allegation that Gadre had with the permission of the Government made a contract of tenancy with the landlord implies such derequisitioning.

9. The said finding of the Appellate Bench is challenged by Mr. Setalvad, the learned Counsel for the petitioners, on the ground that there could not be implied derequisitioning u/s 9 of the Bombay Land Requisition Act, 1948. If at all any de-requisition is to be made the Government must pass an order u/s 9(3) of the Act which runs as follows:

9. (3) When any land is to be released from requisition, the State Government may, after making such inquiry, if any, as it deems fit, specify by order in writing the person to whom possession of the land shall be given.

He submitted that the Appellate Bench ignored this requirement of law and wrongly assumed that there could be an implied derequisition. This contention must be accepted.

10. Mr. Gandhi appearing for the respondents did not and could not argue that there was any derequisitioning "order in writing" as required by Section 9(3) of the Bombay Land Requisition Act, 1948. In the absence of such lawful derequisitioning it must be held that the premises which were requisitioned continued to be requisitioned under the Bombay Land Requisition Act, 1948. Therefore, the contention of Mr. Setalvad that u/s 4 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, the premises were exempted from the operation of the rest of the provisions of the Bombay Rent Act also must be upheld. That section lays down :

4. (1) This Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy, licence or

other like relationship created by a grant from or a licence given by the Government in respect of premises requisitioned or taken on lease or on licence by the Government, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship, by or in the name of any officer subordinate to the Government authorised in this behalf; but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf of the Government on such basis by or in the name of, such officer.

11. It is not disputed that the deceased Gadre was only an allottee of the Government. Some of the words in this section were inserted by Maharashtra Act No. 17 of 1973. Even ignoring those words it is dear that the premises in the possession of an allottee would fall within the ambit of Section 4(1) as the relationship created by grant from the Government is wide enough to include an allotment. The mere fact that the allottee has given rent and obtained rent receipts from the landlady will not affect the rights of the Government to be in possession of the requisitioned premises. Consequently the suit filed by the plaintiffs in the Court of Small Causes u/s 28 of the Act is, in our opinion, wholly misconceived as the Court of Small Causes has no jurisdiction in the matter.

12. The result of this conclusion is that the order passed by the Appellate Bench of the Court of Small Causes must be quashed and the suit must be dismissed as without jurisdiction. Further the Small Causes Court must be prohibited from entertaining the said suit or trying it. Mr. Gandhi however submitted that there are large number of allotted premise which have been taken by the Government servants or their heirs on direct tenancy and respondent No. 3 is making a representation to the Honourable Chief Minister to permit the plaintiffs to have a direct tenancy with respondent No. 10. Mr. Setalvad contended that the plaintiffs have been in possession for almost 7 years as a result of the litigation which is started and it will not be therefore proper for this Court to show any indulgence to the plaintiffs. Mr. Setalvad is undoubtedly right as a matter of law but we cannot forget equity in a matter like this. Respondent No. 3 is the widow of a former Personal Assistant to a former Chief Minister. The other plaintiffs are his children. There are cases where direct tenancies are permitted by the Government. It is possible that the plaintiffs did not move the Government in the matter during the pendency of this petition because the Appellate Bench of the Small Causes Court had passed an order in their favour. Having regard to all these facts and circumstances the petitioners shall not take any steps against respondents Nos. 3 to 9 so as to compel them to vacate before August 3, 1973 with a view to enable the said respondents to make their representation to the Honourable Chief Minister, as stated by Mr. Gandhi. If such representation is made and rejected earlier by the Honourable Chief Minister, however, the petitioners will be free to evict respondents Nos. 3 to 9. Subject to what is stated hereinabove, rule absolute in terms of prayers (1) and (b), with costs.