

PETITIONER:
KUNAL & CHAUDHARI

Vs.

RESPONDENT:
PURSHOTTAM B. TODI & ANR.

DATE OF JUDGMENT: 11/03/1997

BENCH:
B.P. JEEVAN REDDY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:
THE 11TH DAY OF MARCH, 1997

Present:

Hon'ble Mr. Justice B.P. Jeevan Reddy

Hon'ble Mr. Justice G.T. Nanavati

S.K. Dholakia, Sr. Adv., Randhir Jain, and S.S. Mishra,
Advs. with him for the appellant

S. Ganesh, S.R. Setia and L.C. Tolat, Advs. for the
Respondent D.M. Nargolkar, Adv. for the State

J U D G M E N T

The following Judgment of the Court was delivered:

J U D G M E N T

B.P. JEEVAN REDDY. J.

This application has been filed by the petitioner in Special Leave petition (C) No. 16184 of 1996 which was dismissed at the admission stage on 26th August, 1996. While dismissing the special leave petition, this Court had given six months' time for the applicant to vacate the premises and deliver vacant possession to the respondent-landlord. It was specified that the said six months will expire on 26th February, 1997. The applicant was also directed to file the usual undertaking within four weeks-which he did. the applicant says that in vie of the subsequent legislation, namely, the Maharashtra Ordinance No. 23 of 1996 [which has been later enacted into an Amendment Act] amending the provision of the Bombay Rents, Hotel and Lodging Houses Rates [Control] Act, 1997 [Bombay Rent Act], The Bombay land Requisition Act, 1948 and the Bombay Government Premises [Eviction] Act, 1955, creating the statutory relationship of landlord and tenant between the applicant and the first respondent [owner of the premises concerned herein], he should be discharged from the said undertaking. He says, he is entitled to continue in the premises as a statutory tenant.

The premises in question, belonging to the first respondent, were allotted to the applicant's mother in the year 1958 by the Government of Maharashtra under the Bombay land Requisition Act. After the death of his mother in 1974, the applicant continued in possession. The applicant is not a Government servant but was allotted the same, being a homeless person, under what is called the "suppressed

vacancy scheme".

In the year 1988, the first respondent filed a writ petition in the Bombay High Court being Writ Petition No. 1881 of 1988 for a writ of mandamus directing the Government of Maharashtra to derequisition the said premises and to hand over the possession of the same to him. While the said writ petition was pending, a constitution Bench of this Court held in *Grahak Sanstha Manch v. State of Maharashtra* [1994 (4) S.C.C. 192] that the power to requisition under the Bombay Land Requisition Act cannot be exercised so as to deprive the landlord of the possession of the premises indefinitely or for an inordinately long time. The Court pointed out the distinction between acquisition and requisition and accordingly directed the premises requisitioned long ago to be re-requisitioned within a period of eight months. The writ petition filed by the first respondent was allowed by the Bombay High Court on 3rd July, 1996, following *Grahak Sanstha Manch*. The High Court directed the State Government "to pass an order of de-requisition and hand over possession of the premises in question to the petitioner on or before 30th August, 1996". It is against the said decision that the applicant had filed the aforesaid special leave Petition (C) No. 16184 of 1996 which was dismissed by this Court while granting time till 26th February, 1997 to vacate the premises and deliver vacant possession of the same to the landlord.

The Maharashtra Ordinance relied upon by the applicant amends three enactments, namely, Bombay Rent Act, Bombay Land Requisition Act and Bombay Government Premises [Eviction] Act, 1955. It would be appropriate to notice the Statement of objects and Reasons appended to the said ordinance which would facilitate a proper understanding of the amended provisions. The Statement of objects and Reasons refers to the decision in *Grahak Sanstha Manch*, as a consequence of which a large number of Government servants and others occupying requisitioned premises were obliged to vacate and hand over the premises to State Government before the specified date. The Statement points out that there are as many as 604 residential premises and about 90 non-residential premises which are still under requisition in the Greater Bombay and about 138 in other districts. It refers to the fact that several landlords have already approached the High Court seeking eviction of allottees of the requisitioned premises and for de-requisitioning their premises and that those writ petitions are likely to be allowed. The Statement then says that the Government consider it expedient, in greater public interest, to make suitable provision for providing the protection of statutory tenancy under the Rent Act to the State Government and to its allottees and that it is for achieving the said purpose that the ordinance is being issued.

We may now notice the amendments effected to the Bombay Rent Act. Section 2 of the ordinance has inserted clause (1A) in Section 5 defining the expression "Government allottee". The definition comprises two clauses - (a) and (b). Clause (a) refers to the Government servants who are allotted the requisitioned premises and clause (b) relates to others to whom the requisitioned premises have been allotted. It would be sufficient for our purposes to not clause (b) alone. It reads :

"(1A) 'Government Allottee' .--

.....
(b) in relation to any premises requisitioned or continued under requisition which are allotted by

the State Government which are residential purpose to any person and on 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) Ordinance, 1996, such person or his legal heir is allowed by occupation or possession of such premises for his or such legal heir's own residence, means such person or legal heir."

(Emphasis supplied)

Section 3 of the Ordinance has inserted Section 15B, which reads as follows:

"15B. (1) On 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) Ordinance, 1996 (hereinafter in this section referred to as the '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 (1A) of section 5; 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 (1A) of section 5, 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 judgement, decree or order of any court passed on or after the 11th June, 1996, be deemed to have become, for the purposes 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 increases 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 provisions 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

tenant on any of the grounds mentioned in section 13 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-clause (1);

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

[Emphasis supplied]

Section 5 of the Ordinance has added sub-section (8) in Section 9 of the Bombay Land Requisition Act, 1948. Sub-section (8) reads thus:

"(8) On 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) Ordinance, 1996, all the premises requisitioned or continued under requisition under this Act and allotted to Government allottees who, on the said date were allowed by the State Government to continue or to remain in occupation or possession of such premises, shall be deemed to have been released from requisition, and in respect of such premises the State Government, or as the case may be, the Government, or as the case may be, the Government allottees referred to in clause (b) of the Explanation, shall become the tenants by virtue of the provisions of section 15B of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 and the compensation, if any, due in respect of such premises shall be determined and paid to the persons entitled thereto as if such premises were actually released under this section.

Explanation.-- For the purposes of this sub-section, the expression 'Government allottee'--

(a) in relation to any premises requisitioned or continued under requisition which are allotted by 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 date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Ordinance, 1996 are allowed by the State Government to remain in their occupation and 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 are allotted by the state Government for residential purpose to any person and, on 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) Ordinance, 1996, such person or his legal heir is allowed by the State Government to remain in lawful occupation or possession of such premises for his own or such legal heir's residence, means such person or legal heir."

[Emphasis supplied]

The Bombay Government premises [Eviction] Act, 1955 was also correspondingly amended.

The applicant's case is that by virtue of the aforesaid amended provisions, he has become a statutory tenant under the first respondent and, therefore, he should be discharged from the undertaking given by him to this Court pursuant to the Orders of this Court dated 26th August, 1996. In short, he says that he should not be called upon to vacate the said premises and deliver vacant possession thereof to the first respondent in view of the new statutory relationship created by the amended provisions.

The application is stoutly opposed by the first respondent.

When this application came up for hearing, we indicated to Sri Dholakia, learned counsel for the applicant, that two alternate courses are open to him. One is to vacate the premises in accordance with the undertaking given by him to this Court and work out his rights under the amended provisions according to law. The other is to rely upon the amended provisions and say that in view of the said provisions, he should be discharged from undertaking and that he should be allowed to continue in possession of the said premises by virtue of the amended provisions. Sri Dholakia chose the second course and accordingly we are expressing ourselves on the applicant's claim that by virtue of the amended provisions, he has become the statutory tenant of the premises under the first respondent-landlord.

The definition of "Government allottee" in clause (1A) in Section 5 of the Bombay Rent Act, as already pointed out, comprises two clauses, viz., (a) and (b) and that the applicant claims to fall under clause (b) [Admittedly, he does not fall under clause (a)]. But for falling two requirement:

(1) The requisitioned premises are allotted by the State Government to him for residential purpose and (2) on the date of coming into force of the said Ordinance, the applicant "is allowed by the State Government to remain in occupation or possession of such premises for his....residence". The definition of "Government allottee" in the explanation appended to sub-section (8) of Section 9 of the Bombay Land Requisition Act is in the same terms. The Ordinance was issued on and commenced on December 7, 1996. The question is whether it can be said that on 7th December, 1996 the applicant is a person who "is allowed by the State Government to remain in occupation or possession of the said premises for his residence"? We think not. pursuant to the judgment of the High Court dated 3rd July, 1996 allowing Writ Petition No.1881 of 1988, it is pointed out by Sri S. Ganesh learned counsel for the first respondent, the Government of Maharashtra has passed two Orders. Under the Order dated 24th July, 1996, the applicant was called upon to vacate the premises and hand over the same to the Government so as to enable it to de-requisition the said premises and deliver possession of the same to the landlord as directed by the High Court. Subsequently, on 17th August, 1996, the Government of Maharashtra made an Order under Section 11(1) of the Bombay Land Requisition Act authorizing the area Sub-Inspector in the office of the Controller of Accommodation to take vacant possession of the said premises from the applicant on or before 30th August, 1996. The area Sub-Inspector was empowered to use such force as may be reasonably necessary for the said purpose. The said Order could not, however, be implemented or executed for the reason that this Court by its Order dated 26th August, 1996 permitted the applicant to remain in occupation of the premises till 26th February, 1997. It is obvious that but for the said Order of this Court, the area Sub-Inspector would have evicted the applicant from the said premises. In any event, the authority of the applicant to occupy the premises by virtue of the allotment Order made by the State Government came to an end on 30th August, 1996 was one "allowed" by the State Government. It was wholly and exclusively attributable to the Order of this Court dated 26th August, 1996. To repeat, as on 7th December, 1996 [the date of Ordinance] the applicant was not a person who "is allowed by the State Government to remain in occupation or possession of such premises for his residence", which means that he does not fall within the definition of "Government allottee" contained in clause (1A) in Section 5 of the Bombay Rent Act. He cannot, therefore, take advantage of Section 15B of the said Act. For the same reason, he cannot also seek to take benefit of sub-section (8) of Section 9 of the Bombay Land Requisition Act, 1948.

For the above reasons, the contention that the applicant has become a statutory tenant under the first respondent by virtue of the aforesaid Ordinance [subsequently enacted into an Act*] is unsustainable in

* We may mention that though the Maharashtra Legislature is stated to have enacted an Act in terms of the Ordinance, We were referred by the learned counsel for both parties only to the provisions of the Ordinance on the ground that provisions of both the Ordinance and the Amending Act are identical.

law and is rejected herewith. Interlocutory Application shall pay the costs of the respondent assessed at Rupees two thousand and five hundred only.

JUDIS