

PETITIONER:
MAHESHCHANDRA TRIKAMJI GAJJAR

Vs.

RESPONDENT:
THE STATE OF MAHARASHTRA & ORS.

DATE OF JUDGMENT: 09/03/2000

BENCH:
K.T.Thomas, Y.K.Sabharwal

JUDGMENT:

Y.K.SABHARWAL J.

Leave granted.

Respondent No.3 was a State Government employee. He retired from Government service on 30th September, 1993. As a Govt. servant, respondent no.3 was allotted the premises in question. These were requisitioned premises, having been requisitioned under the order of requisition dated 17th April, 1958 under the Bombay Land Requisition Act, 1948. The order of requisition has been set aside but respondent no.3 continues to be in possession of the premises. Has respondent no.3 any right to continue with the possession of the premises despite the order of requisition having been set aside and respondent no.3 having retired from service, is the question for consideration before us.

The appellant and respondent No.4 are the co-owners of the property. In this appeal, we are not concerned with their inter se disputes which are the subject matter of Suit No. 4120 of 1990 which suit is for partition and other consequential reliefs and is pending in the High Court of Bombay. Under an ad interim order passed in that suit, on derequisition the property is to be restored to respondent no. 4 and has to be kept by him by way of interim measure.

The appellant challenged the order of requisition dated 17th April, 1958 in the writ petition filed by him in the High Court of Bombay. Apart from questioning the legality and validity of requisition, the appellant also sought restoration of possession of the premises in question. The challenge to the legality and validity of the requisition was based upon the decision of this Court in Grahak Sanstha Manch & Ors. v. State of Maharashtra [(1994) 4 SCC 192] where it has been held that the requisition cannot be for indefinite period and continuance of an order of requisition for a period of 30 years was unreasonable.

By judgment dated 19th January, 1999, a Division Bench of the Bombay High Court following the ratio of the case of Grahak Sanstha Manch has quashed the order of requisition

dated 17th April, 1958. None has questioned the setting aside of the order of requisition. It is not in dispute that the said aspect has attained finality. The prayer for restoration of possession of the premises in question has, however, been declined by the High Court. In respect of the said prayer, the High Court has directed that the parties shall abide by the decision of this Court in Special Leave Petition No. 15788 of 1998.

The background leading to filing of Special Leave Petition No.15788 of 1998 may be briefly noticed. After the decision in the case of Grahak Sanstha Manch, the State of Maharashtra enacted Maharashtra Act No.XVI of 1997 amending the Bombay Rents, Hotel and Lodging House Rates Control, the Bombay Land Requisition and Bombay Government Premises (Eviction)(Amendment) Act, 1996 w.e.f. 7th December, 1996. This amendment was declared unconstitutional by judgment of the Division Bench of the High Court of Bombay dated 27th July, 1998. Against the said judgment, the State of Maharashtra preferred Special Leave Petition No. 15788 of 1998 which has been granted and the dispossession stayed by this Court in terms of orders 6th October, 1998. The order dated 6th October reads as under :-

" Leave granted. Printing dispensed with.

Hearing expedited.

It will be open to the parties to mention before the first court for fixing a date of hearing of these appeals. Pending hearing and final disposal of these appeals interim stay as to dispossession is granted. The stay is granted on the condition that the allottees who have been made tenants under the impugned legislation shall file an undertaking before this Court that in case they lose in these appeals they will pay monthly compensation at such rate as may be determined by this Court for the premises in their possession. The allottees shall file their undertakings within eight weeks from today."

In view of aforesaid order, the High Court in the impugned judgment observed that it is not possible to entertain the prayer for restoration of possession for which the party shall abide by the decision of this Court. Respondent no.3 was directed, however, to deposit the amount of compensation in Suit No. 4120 of 1994 without prejudice to the rights and contentions of the parties.

In this appeal, the challenge to the impugned judgment is to the extent it declines the prayer of the appellant for restoration of possession of the premises in question. Learned counsel for the appellant submits that assuming the amendments inserted under Maharashtra Act No.XVI of 1997 to be valid, respondent no.3 will still have no right to continue in occupation of the premises. For the present purposes, we would assume the amendments to be valid (leaving the question of the constitutional validity to be determined in appeal arising out of SLP(C) No. 15788 of 1998 and on that basis examine the contention of respondent no.3 to continue in possession of the premises.

By Amendment Act No.XVI of 1997, the statutory protection was sought to be given to the allottees of the requisitioned premises by providing for the State Government or the Government allottees becoming deemed tenants of the

requisitioned premises. By the Amendment Act, clause (1A), defining 'Government allottee' was inserted. Another new provision inserted was Section 15B providing for the State Government or Government allottees to become tenant of premises requisitioned or continued under requisition. Section 5(1A) and Section 15B read as under :-

"Section 5(1A) - Government allottee - (a) in relation to any premises requisitioned or continued under requisition which are allotted by the State Government for any non-residential purpose to any department or office of 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 cooperative 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) Act, 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) Act, 1996, such person or his legal heir is allowed by the State Government to remain in occupation or possession of such premises for his or such legal heir's own residence, means such person or legal heir;"

"Section 15B - State Government or Government allottee to become tenant of premises requisitioned or continued under requisition-

(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) Act, 1996 (hereinafter in this section referred to as '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 such 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-section (1);

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

In Writ Petition No. 98 of 1997 and other connected writ petitions titled Ravi Ramakrishnan Subramanyam v. State of Maharashtra & Ors, a Division Bench of Bombay High Court in terms of its judgment dated 30th January, 1997 had held that for getting benefit of becoming a deemed tenant, the person has to satisfy that : (1) the requisitioned premises were allotted by the State Government for residential purposes.

(2) on 7th December, 1996, such person or his legal heir was in occupation or possession of such premises.

(3) such person or his legal heir is allowed by the State Government to remain in occupation or possession of such premises. If an eviction order under the Requisition Act is passed by the Competent Authority, it cannot be said that the State Government has allowed such person to remain in occupation or possession of such premises or that the said person is allowed to remain in lawful occupation or possession. After the eviction order passed by the competent authority, which becomes final under the Bombay Requisition Act, it cannot be said that to such an allottee, permission is granted by the State Government to continue in such occupation. Orders passed by the Competent Authority under the Requisition Act are not nullified.

(4) As against this, a person would get benefit notwithstanding any judgement, decree or order passed by the Court after 11th June, 1996. However, if the judgement, decree or order is passed prior to 11th June, 1996, it is not nullified. Therefore, the allottee would not get benefit of his provision if judgement, decree or order is passed prior to 11th June, 1996 even in case where the Court has granted time for vacating the premises after 7th December, 1996.

The aforesaid decision of Bombay High Court resulted in issue of the Bombay Land Requisition and the Bombay Government Premises (Eviction)(Amendment) Ordinance, 1997 (Maharashtra Ordinance No. XX of 1997) dated 26th December, 1997 thereby making amendments in Bombay Rents, Hotel and Lodging House Rent Control Act, 1947, Bombay Land Requisition Act, 1948 and Bombay Government Premises

(Eviction) Act, 1955. The relevant part of the Ordinance which, we have been told by learned counsel for respondent no.3 became an Act later, reads as under :-

"2. Amendment of Section 5 of Bom.LVII of 1947 ?? In section 5 of the Bombay Rents, Hotel and Lodging House Rates control Act, 1947 (hereinafter referred to as 'the principal Act'), in clause (1A)??

(a) in sub-clause (a), for the words 'are allowed by the State Government to remain in their occupation and possession' the words 'are in their occupation or possession' shall be and shall be deemed to have been substituted with effect from the 7th December, 1996;

(b) in sub-clause (b), for the words 'such person or his legal heir is allowed by the State Government to remain in occupation or possession of such premises for his or such legal heir's own residence' the words 'such person or his legal heir is in occupation or possession of such premises for his or such legal heir's own residence' shall be and shall be deemed to have been substituted with effect from the 7th December, 1996.

3. Amendment of section 15B of Bom.LVII of 1947 ?? In section 15B of the principal Act, in sub-section (1), after the figures, letters and words '11th June 1996' the words and figures 'or in any order of eviction issued by the Competent Authority or by the Appellate Authority, under the Bombay Land Requisition Act, 1948', shall be and shall be deemed to have been inserted with effect from the 7th December, 1996.

4. Amendment of section 9 of Bom.XXXIII of 1948 ?? In section 9 of the Bombay Land Requisition Act, 1948, in sub-section (8), ??

(a) for the words 'were allowed by the State Government to continue or to remain in occupation or possession of such premises' the words 'were in occupation or possession of such premises' shall be and shall be deemed to have been substituted with effect from the 7th December, 1996.

(b) in the Explanation,??

(i) in clause (a), for the words 'are allowed by the State Government to remain in their occupation and possession' the words 'are in their occupation or possession' shall be and shall be deemed to have been substituted with effect from the 7th December, 1996;

(ii) in clause (b), for the words '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' the words 'such person or his legal heir is in occupation or possession of such premises for his or such legal heir's own residence' shall be and shall be deemed to have been substituted with effect from the 7th December, 1996.

5. Amendment of section 2 of Bom.II of 1956 ?? In section 2 of the Bombay Government premises (Eviction) Act, 1955, in clause (b) for the words 'are allowed by the State Government to remain in their occupation and possession' the

words 'are in their occupation or possession' shall be and shall be deemed to have been substituted with effect from the 7th December, 1996.

6. Removal of doubt ?? For the removal of doubt, it is hereby declared that the conferral of tenancy rights on a Government allottee under the provisions of the principal Act as amended by this Ordinance shall not have the effect of setting aside the decision of a court inter partes to which effect has already been given, or in any way affect the undertaking given by or on behalf of any Government allottee in the court.

The contention urged on behalf of the appellant is that none of the aforesaid amendments create any right in favour of respondent no.3 who retired from service on 30th September, 1993, to continue with possession of premises in question even after retirement. Despite these amendments, respondent no.3 cannot be treated as a 'Government Allottee' and, a deemed tenant, is the contention.

The continued requisition for a period of 30 years was held to be unreasonable by this court in the case of Grahak Sanstha Manch. The effect of the said decision would have been the vacation of the premises by the State government and the Government allottees on account of invalidity of the order of requisition. With a view to overcome it, Maharashtra Act XVI of 1997 was enacted. That has been declared unconstitutional by the High Court but appeals are pending in this Court. For the present purposes, we assume these amendments to be valid. Would section 5(1A) make a retired person a Government allottee? The amendment was inserted w.e.f. 7th December, 1996. Respondent no.3 had already retired nearly three years earlier. In the present case, we are concerned with clause (b) of Section 5(1A) which inter alia deals with requisitioned premises that are allotted for residential purposes. Allowing a retired person to indefinitely remain in occupation or possession of the requisitioned premises was not the object of the amendments. It is also not possible to read clause (b) in such a manner on its plain language. The Statement of Objects and Reasons for Amendment Act XVI of 1997 inter alia provides as under :- "1. The Bombay Land Requisition Act, 1948 is enacted to provide for requisition of land for relieving the pressure of accommodation, especially in urban areas, by regulating distribution of vacant premises for public purposes, and for certain other purposes incidental thereto. Certain premises which have been requisitioned or continued under requisition under the said Act have been allotted for non-residential purpose to many departments or offices of the States Government or Central Government or public sector undertakings, corporations owned or controlled fully or partly by the State Government or cooperative societies or foreign consulates and for residential purpose to different categories of persons such as employees of the State or Central government, public sector undertakings, corporations, or homeless persons, etc. Many of these premises have since been derequisitioned by the Government, as per Court orders or having regard to certain other circumstances. But still there are quite a large number of allottees in occupation of such premises, for a number of years, on payment of compensation as determined under the said Act. The allottees of such premises include Government servants who are still in Government service and others.

2. Under the existing provisions of section 9 of the Bombay Land Requisition Act, 1948, as last amended by Mah. Act No. VII of 1995, the premises which have been requisitioned on or before 27th December, 1973 will have to be released from the requisition on or before 26th December, 1997 and those which have been requisitioned after 27th December, 1973, within twenty-four years from the date on which possession of such land was surrendered or delivered to, or taken by, the State Government. Further the Supreme Court in Writ Petition No. 404 of 1986 filed by the Association of Allottees of the Requisitioned premises and Writ Petitions No. 53 of 1993 and 27 of 1994 filed by the Grahak Sanstha Versus State of Maharashtra, has given a final decision on the 27th April 1994 in the matter of requisitioned premise [AIR 1994, SC, 2319], upholding the decision in the H.D.Vora's case [(1984) 2 SCC 337] and has directed that the occupants of the requisitioned premises, the continued requisition of which was quashed, were bound to vacate and hand over vacant possession of such premises to the State Government on or before 30th November, 1994 so that the Government could derequisition such premises and hand over the vacant possession thereof to the landlords. Accordingly, derequisitioning process, in respect of all such premises and applying the ratio of the said Supreme Court Judgment, in several other premises, has already been completed by the State Government. There are, however, as aforesaid, nearly 604 residential premises and about 90 non-residential premises which are still under requisition in Brihan Mumbai and 138 in other districts which include requisitioned premises allotted to Government servants who are still in Government service and others. 3. As a matter of policy, the State Government has stopped requisitioning of new premises except in some special cases. As a result of this policy and also due to, continued acute shortage of accommodation with Government and astronomical rise in the cost of properties in Mumbai, it would not be possible for Government to give suitable alternative accommodation to all such allottees if, applying the ratio of the said Supreme Court Judgment the Government has to vacate all the requisitioned premises. The situation is, therefore, likely to result in the Government allottees presently in occupation of the requisitioned premises being rendered without any office accommodation or homeless. It is imperative to find a solution to this grave situation and to give some kind of statutory protection to these allottees of the requisitioned premises.

4. As the landlords are generally unwilling to accept such Government allottees as contractual tenants, on payment of the standard rent and permitted increases, Government considers it expedient, in greater public interest, to make suitable provisions for providing the protection of statutory tenancy under the Rent Act to the State Government and to such Government allottees; and consequently to provide for the release of such premises from requisition.

5. As many landlords have already approached the High Court seeking eviction orders of the allottees of the requisitioned premises and the possibility of others also approaching the Court for such eviction orders cannot be ruled out, thereby frustrating the very object of this legislation, it is also considered expedient to provide in the proposed section 3 of this Ordinance that, such conferral of statutory tenancy rights on the allottees shall not be affected by any eviction orders passed by the Court

on or after 11th June, 1966 (being the date of the Government decision to undertake such legislation)."

It is evident that the object was to protect those who would have been rendered homeless though still in Government service on account of the shortage of accommodation with the Government and it being not possible for the Government to give suitable alternative accommodation to such Government allottees. It is not and cannot be the case of the respondents that even after retirement, the Government had any obligation or policy to provide accommodation to retired employee. If the contention of respondent no.3 that he became a deemed tenant on account of 1997 amendment is accepted, it would show that the Government intended to confer a special benefit of providing residential accommodation to occupants of requisitioned accommodation as a superannuation benefit. That is clearly not the object of the amendments. If that was so, there would be a special class of employees. A class that is allotted, while in service, with accommodation which is requisitioned which class would get the special benefit even on superannuation. This class will become tenant under the original owner after retirement with the benefits of all protections under Bombay Rents Hotel and Lodging House Rent Rates Control Act, 1947. Their heirs and successors may also subject themselves to eviction only on proof of one or the other ground of eviction provided in the Act. Thus, if one is fortunate enough to be allotted accommodation out of the requisitioned premises while in service, he gets by way of superannuation gift, the continued tenancy and others who may not be that fortunate to get allotment of such premises, will have to vacate Government accommodation as per the relevant rules after retirement. We are unable to attribute such an intention to the aforesaid amendments. The deletion of the words 'allowed by the State Government to remain' from clause (b) of Section 5(1A) by Ordinance dated 26th December, 1997 also does not alter the status of an occupant like respondent no.3. The word 'allowed' in the aforesaid provision may mean some positive sanction and not mere slackness on the part of the Competent Authority in not taking action for getting the premises vacated. It is evident that the accommodation or possession of the premises within the meaning of clause (b) by a person who when allotted was a Government employee has to be on account of some right to occupy or possess the premises. The continued occupation or possession without any such right would not confer on the occupant status of a Government allottee simply on account of such person being in occupation or possession of requisitioned premises even after retirement. The reason for authorities not taking any action to get such premises vacated is explainable on account of the said premises being not available for allotment again to any existing Government servant. On this account, the authorities may not initiate any proceedings for getting the possession but that would not confer on the occupant the status of 'Government Allottee' within the meaning of the term as defined in the Amendment Act. Thus, assuming the Amendments to be valid, we find that no right in favour of respondent no.3 to continue with the possession of the premises even after the invalidity of the order of requisition dated 17th April, 1958 and his retirement. Respondent no.3 cannot be treated as deemed tenant.

The other contention urged on behalf of respondent no.3 that he is entitled to continue in possession in view

of the Stay order granted by this Court on 6th October, 1998 is also without substance. The said order only relates to those allottees who have become tenants under the Amendment Act. The amendment has not conferred status of the tenant on respondent no.3. Therefore, the question of the order dated 6th October, 1998, protecting the possession of the respondent No. 3 does not arise. The filing of any undertaking by respondent no. 3 in the said appeal filed by the Welfare Association is of no consequence and cannot affect the rights of the appellant and the respondent no.4 who are not parties in the said appeals.

In view of the aforesaid, we do not find any justification in respondent no.3 continuing with the possession of the premises in question. Accordingly, we direct him to restore possession of the premises in question in favour of the appellant and respondent no.4. The possession will be delivered to respondent no.4 in view of the orders passed in suit for partition No. 4120 of 1994 subject to any further orders that may be passed in the said suit. Respondent no.3 is granted three months' time to vacate and hand over possession to respondent no.4. The appeal is allowed in the above terms leaving the parties to bear their own costs.