



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1836 OF 2012

1. Geeta Mangesh Laud }
 2. Madhavi Mangesh Laud }
 3. Jyotsna Mangesh Laud }
 4. Vinayak Mangesh Laud }
- All of Mumbai Indian Inhabitants, }
- residing at Flat No.5, first floor, }
- “Ruby Mansion”, Behind Metro }
- Cinema, Dhobitalav, }
- Mumbai- 400 020. }..Petitioners
- V/s.
1. The Appellate Authority and }
 - The Principal Secretary }
 - General Administration Department, }
 - Government of Maharashtra, }
 - Mantralaya, Mumbai-400 032. }
2. The Controller of Accommodation }

- Having his office at 19th Floor, }
 New Administrative Building, }
 Mantralaya, Mumbai. }
3. The State of Maharashtra Through }
 the Government Pleader High Court, }
 Mumbai. }
4. Mrs. Alice D'souza, of Mumbai, }
 Indian Inhabitant, residing at }
 "Ruby Mansion", Marine Lines, }
 Behind Metro Cinema, }
 Dhobitalav, Mumbai- 400 020 }...Respondents

WITH
 WRIT PETITION NO. 1653 OF 2012

1. ~~Kumud Fondekar of Mumbai~~ }
~~Indian Inhabitant, residing at Flat~~ }
~~No.4, First floor, "Ruby Mansion",~~ }
~~Marine Lines, Behind Metro Cinema,~~ }
~~Dhobitalav, Mumbai 400 020~~ } (Deleted)
- 1.1 Siddhartha Fondekar, of }
 Mumbai Indian Inhabitant, }

residing at Flat No.4, first floor, }
“Ruby Mansion”, Barrack Road, }
Behind Metro Cinema, Dhobitalav, }
Mumbai- 400 020. }..Petitioner

V/s.

1. The Appellate Authority and }
The Principal Secretary }
General Administration Department, }
Government of Maharashtra, }
Mantralaya, Mumbai-400 032. }
2. The Controller of Accommodation }
Having his office at 19th Floor, }
New Administrative Building, }
Mantralaya, Mumbai. }
3. The State of Maharashtra Through }
the Government Pleader High Court, }
Mumbai. }
4. Mrs. Alice D’souza, of Mumbai, }
Indian Inhabitant, residing at }
“Ruby Mansion”, Marine Lines, }
Behind Metro Cinema, }

Dhobitalav, Mumbai- 400 020

}...Respondents

WITH

WRIT PETITION NO. 925 OF 2012

1. Mrs. Alice D'souza, of Mumbai, }
Indian Inhabitant, residing at }
"Ruby Mansion", Marine Lines, }
Behind Metro Cinema, }
Dhobitalav, Mumbai- 400 020 }...Petitioner

V/s.

1. The State of Maharashtra The }
Chief Secretary Mantralaya, }
Mumbai- 400 032. }
 2. The Collector of Mumbai Mumbai }
Collector's Office old Custom }
House Mumbai. }
 3. Geeta Mangesh Laud }
 4. Madhavi Mangesh Laud }
 5. Jyotsna Mangesh Laud }
 6. Vinayak Mangesh Laud }
- All of Mumbai Indian Inhabitants, and }
Heirs of Mangesh Laud (Son of the }

late Mr. D.S. Laud) and residing at }
 Flat No.4, first floor, }
 “Ruby Mansion”, Carnegy Lines, }
 Near Cinema Road Mumbai-400 020. }

7. ~~Kumud R. Fondekar Married~~ }
~~Daughter of Mr. D.S. Laud Residing~~ }
~~At at Flat No.5, First floor,~~ }
~~“Ruby Mansion”, Carnegy Lines,~~ }
~~Near Cinema Road~~ }
~~Mumbai 400 020.~~ } (Deleted)

7A Siddhartha Fondekar, of }
 Mumbai Indian Inhabitant, having }
 his address at Flat No.4, first floor, }
 “Ruby Mansion”, Barrack Road, }
 Behind Metro Cinema, Dhobi Talao, }
 Mumbai- 400 020. }

Mr. Mustafa Doctor, Senior Advocate a/w Cyrus Ardeshir, Mr. Nigel Quraishy i/b Mr. Dushyant Kumar, for Petitioner in WP/925/2012 and for Respondent No. 4 in WP/1653/2012 and WP/1836/2012.

Mr. Sharan Jagtiani, Senior Advocate, a/w. Ms. Surabhi Agarwal,

Mr. Vachan Bodke, Mr. Aniket Tawde, Ms. Trupti Talati and Mr. Hitesh Gupta i/b. M/s. V.M. Legal, for Petitioner in WP/1653/2012 & WP/1836/2012, for Respondent Nos. 3 to 7 in WP/925/2012.

Mr. Abhay L. Patki, Addl. G.P. for Respondent Nos. 1 & 2-State in all WPs.

CORAM : R.D.DHANUKA, AND

M.M.SATHAYE, JJ.

RESERVED ON : 19th APRIL 2023

PRONOUNCED ON : 4th MAY 2023

COMMON JUDGMENT (PER: M.M.SATHAYE,J.)

1. Rule is already issued in these petitions. Respondents have appeared. The matters are heard at length for final disposal.

2. These three petitions are connected matters in as much as the subject matter property and the contesting parties are common. All three petitions are in respect of subject matter property which is Block Nos. 1 and 2 (Flat Nos. 4 and 5) on the first floor of building called Ruby Mansion situated on property bearing C. Survey No. 1873, Carnegy Lines, Near Metro Cinema, Mumbai. This property is hereinafter referred to as “the subject matter property or the said premises” for short.

3. The Petitioners in Writ Petition No. 1836 of 2012 and the Petitioner in Writ Petition No. 1653 of 2012 have filed petitions challenging the Judgment and orders dated 21st June 2010 and 27th July 2010 respectively passed by the Controller of Accommodation and the Appellate Order dated 26th August 2011 passed in File No. R-II/Niwas/88 by the Appellate Authority and Principal Secretary, General Administration Department (GAD), Government of Maharashtra in respect of flat Nos. 5 and 4 respectively.

4. Writ Petition No. 925 of 2012 filed by the Owner seeks prayer of quashing and setting aside an Order dated 17th July 1946, which is an order of requisition under the then existing the Defence of India Act (Act of XXXV of 1939). She also seeks a writ of mandamus directing the Respondent/State Government and the Collector of Mumbai to cancel/withdraw the order dated 17th July 1946 and to handover vacant and peaceful possession of the said premises to her and to forthwith implement de-requisition order dated 24th July 1946 and 27th July 1946.

5. The Petitioner in Writ Petition No. 925 of 2012 is the present owner of the subject matter property, who is an old lady of advanced age and who is hereinafter referred to as “the

Owner”. The Petitioners in the remaining two petitions i.e. Writ Petition Nos. 1836 of 2012 and 1653 of 2012 are the Occupants of the subject matter property who are hereinafter referred to as “the Occupants” for short.

6. The Occupants are legal heirs of one Mr. D.S. Laud, who was initially inducted in the said premises in 1940s under provisions of Defence of India Act and Rules made thereunder as a government officer in the Civil Supplies Department. It is admitted position that the said property is still in possession of his legal heirs against whom the Owner is litigating for recovery of possession.

7. Perusal of the prayers in these three petitions make it clear that the Occupants seek to challenge the concurrent findings against them under which they are declared as unauthorised occupants and are directed to handover vacant and peaceful possession of the said premises. Needless to mention that if the two petitions filed by the Occupants fail, then we may not be required to go into all the prayers of Writ Petition No. 925 of 2012 filed by the owner, especially in view of the stand taken by the Respondent State Government in its submissions, to which we will advert in the following paragraphs.

8. Brief facts which has resulted in filing of these three petitions are summarized below:

8.1 By letter dated 13th July 1944, the Deputy City Engineer Bombay Municipality (as he then was), the then owner of the said premises (present owner's predecessor) was informed that first floor of the subject matter property (consisting of flat Nos. 4 and 5) were retained for municipal use.

8.2 By letters of September 1944 to December 1944, the Bombay Municipality called upon the owner of the said premises to carryout repairs therein.

8.3 By order dated 17th July 1946, the Governor of Bombay (as he then was) ordered exercising powers under Rule 81(2) of the Defence of India Rules directing the owner to let the said premises to Ms. D.S. Laud w.e.f. the date the requisition order in respect of the premises is withdrawn.

8.4 By order dated 24.07.1946 the Collector Bombay ordered that the requisition is withdrawn w.e.f. 01st August 1946.

8.5 By order dated 27th July 1946, the Collector Bombay directed that the possession of the first floor of the building, where the said premises are situated, should be released from requisition and be given to the owner. It is a matter of record that despite this order, the possession of the said premises was not handed over to the owner.

8.6 By letter dated 15th April 1947, the Officer (Special Duty Revenue Department) directed the controller of Government Grant shop to make private arrangement with Mr. D.S. Laud for having the said premises on first floor sublet by private arrangement.

8.7 By letter dated 29th May 1947, the owner requested the Collector for release of the subject matter of property as required the same for their personal use, pointing out that Mr. D.S. Laud, the occupant of the said premises was no longer an essential service man, but was still occupying the said premises.

8.8 By letter dated 12th July 1950, Bombay Municipality directed the owner to carryout repair work of the said premises which was in occupation of Mr. D.S. Laud. By letters dated 08th April 1952, 24th March 1952 and 02nd May 1952, the Advocate of Mr. D.S. Laud declined to handover possession of the said premises to the owner. The first letter amongst them dated 08th April 1952 admits that the said premises are under requisition and in occupation of Mr. D.S. Laud from the year 1944.

8.9 Again by letter dated 25th July 1952 Bombay Municipality directed the owner to carryout repair work in the said premises occupied by Mr. D.S. Laud.

8.10 On 08th May 1987, the owner issued notice to Respondent Nos. 1 and 2 requesting release of said premises from requisition.

8.11 It appears that from 1987 to 1991, the owner had filed Writ Petition No. 3526 of 1987 challenging the earlier orders of requisition and orders connected therewith. However, the said petition was withdrawn on 13th January 1988 with liberty to file separate suit. It also appears that the owner had filed another Writ Petition No. 133 of 1991 challenging the orders of requisition and certain orders connected therewith, but this petition was also dismissed as withdrawn by order dated 5th February 1991. This order was passed when the Owner sought leave to withdraw the said Petition with a view to seek review of earlier order dated 13th January, 1988. It further appears that the Review Petition was also dismissed on 20th March 1991.

8.12. The present set of litigation from which the impugned orders in Writ Petition Nos. 1836 of 2012 and 1653 of 2012 arise, began with notice under Section 8C(2) of Bombay Land Requisition Act, 1948 ("BLR Act" for short, which act is subsequently named as Maharashtra Land Requisition Act) which was issued to Mr. Mangesh D. Laud (Legal heir of Mr. D. S. Laud and predecessor of the Petitioners in Writ Petition Nos. 1836 of 2012 and 1653 of 2012) calling for a hearing as regards his occupancy of the said premises on first floor of the building. This notice was issued on 06th November 2009.

8.13. Perusal of the impugned order dated 21st June 2010 passed by the Controller of Accommodation pursuant to the aforesaid notice, shows that the occupant of the said premises Shri. Mangesh D. Laud had submitted written submissions and also documents along with it in support of his case. After hearing Advocate for Shri. Mangesh D. Laud by a reasoned Order, the Controller of Accommodation directed the said Shri. Mangesh D. Laud to vacate the said premises within 30 days from the date of receipt of the order and handover the vacant possession thereof to the State Government. This order is passed in exercise of powers under the Bombay Land Requisition Act, 1948. In this order it is concluded by the Controller of Accommodation that documents furnished by Mr. Mangesh D. Laud do not establish tenancy. That Mr. D.S. Laud was inducted in the said premises with specific intention because he was government servant; that government servant or his legal heirs cannot be permitted to occupy the requisitioned premises after retirement or death of the government servant (allottee). The predecessors of the Occupants filed appeals against the aforesaid order dated 21st June 2010 under Section 8D of the Bombay Land Requisition Act, 1948.

8.14 It appears that the Owner intervened in the aforesaid appeals and said intervention was allowed. This fact is not disputed by the Occupants.

8.15 The learned Appellate Authority and Principal Secretary, GAD, Government of Maharashtra (under the Bombay

Land Requisition Act, 1948) heard the said appeal and by a reasoned orders dated 26th August 2011 dismissed the same thereby upholding the order of the Controller of Accommodation dated 21st June 2010 and 27th July 2010.

8.16 This has given rise to filing of Writ Petition Nos. 1836 of 2012 and 1653 of 2012 challenging the said orders by the legal heirs of original allottee.

8.17. It is apparent that since the impugned orders in petitions filed by the Occupants direct them to handover possession to the Government, the Owner has filed separate petition, subsequent in time being Writ Petition No. 925 of 2012 (but numbered earlier) seeking direction to handover the vacant and peaceful possession of the said premises to her.

SUBMISSIONS :

9. We have heard learned Senior Counsel Mr. Mustafa Doctor for the Owner/Petitioner in Writ Petition No. 925 of 2012 and learned Senior Counsel Mr. Jagtiani for the Occupants/Petitioners in Writ Petition Nos. 1836 of 2012 and 1653 of 2012 and Mr. Patki learned Government Pleader for the Respondent/State in support of rival claims.

10. Mr. Jagtiani, Learned Senior Counsel for the Occupants has made submissions in 2 parts; viz. one opposing

the petition filed by the Owner and second, assailing the impugned Notice dated 6th November 2009 as well and the impugned Orders dated 26th August 2011.

11. First part of his submissions is based on how the Owner has failed in her previous proceedings against the Occupants viz. Writ Petition Nos. 3526 of 1987 & Writ Petition No. 133 of 1991 and a Review Petition against one of the earlier orders and what prayers were made therein and how she did not file suit against the Occupants despite taking liberty to file suit and how orders of withdrawal in the said petitions will bar her from raising present dispute etc. Suffice it to say here that we will go into these submissions, if need be.

12. Mr. Doctor, learned counsel for the owner has made elaborate submissions in support of the case in Writ Petition No. 925 of 2012, which has been rejoined by Mr. Jagtiani for the occupants. Let us first consider the second part of Mr. Jagtiani's submissions made on behalf of the Occupants. Reason for the same is already expressed by us in para 7 above.

12.1. He submitted that The Defence of India Act, 1939 ("DoI Act" for short) came into force on 29th September 1939. An Ordinance was issued dated 21st December 1945 validating the requisitions that were made and before the expiry of that

Ordinance, an Act called the Requisitioned Land (Continuance of Powers) Act, 1947 i.e. Act No. XVII of 1947 (“the said Continuance of Powers Act” for short) was passed whereby certain powers under the DoI Act, 1939 were continued and power to acquire property, subject to the conditions mentioned in the Act was also given.

12.2. He further submitted that at the time when de-requisition Order was passed, the BLR Act was not even in force. He submitted that BLR Act received its assent on 11th April 1948. Section 7 of BLR Act recognizes requisitions made under the said Continuance of Powers Act. Therefore, prior to BLR Act coming into force the said Continuance of Powers Act recognized requisitions made under DoI Act.

12.3. He further submitted that therefore impugned Notice and impugned Orders are without jurisdiction and the impugned Orders are *ex facie* without jurisdiction and are therefore null and void and also malafide and arbitrary exercise of powers only to assist the Owner in recovering possession without filing a suit, especially when the filing of any suit even today would be time barred. He submitted that the impugned orders are liable to be quashed and set aside because they take into consideration extraneous and irrelevant factors.

12.4. He submitted that the Impugned Orders amount to deprivation of property without following due process of law i.e. a Suit, which was the only recourse available to Owner, after Order passed in WP No. 3526 of 1987.

12.5. He argued that the subject premises was requisitioned under the Rule 76 and 79 of the Defence of India Rules, 1939 ("DoI Rules" for short) on 28 March 1942 and the Order dated 17th July 1946 for compulsory letting with effect from the date of derequisition was made under Rule 81(2)(iii) of the DoI Rules. The de-requisition was by Order dated 24th July 1946 i.e before the BLR Act came into force. The first Impugned Order brings the Occupants under the purview of Amendment Act No. XVI of 1997, which is entirely non applicable to the present case as by Amendment Act No. XVI of 1997, statutory protection was given to the allottees (Government Allottees) of the requisitioned premises as deemed tenants of the requisitioned premises. By the Amendment Act, Clause 1-A defining "Government Allottee" was inserted. Another new provision inserted was Section 15-B providing for the State Government or Government allottees to become tenant of premises requisitioned or continued under requisition. As per this Act if as on 7th December 1996, a Government Allottee of requisitioned premises is in occupation he/she would be a deemed tenant. Therefore, this Act has been erroneously applied as these provisions have no application to

premises which were derequisitioned as early as in the year 1946 and the Petitioners continued to be in occupation of the premises not as government allottees but as tenants of Respondent No. 4 / Owner ever since then.

12.6. He further submitted that there is no explanation in the Impugned Orders as to how the BLR Act would apply to premises requisitioned and derequisitioned prior to 1948, especially when such de-requisition was before the coming into force of the BLR Act.

12.7. He further submitted that the First Impugned Order dated 21st June 2010 passed by the Office of the Controller of Accommodation proceeds on the basis that the Order of de-requisition was passed on 24th July 1946. Without considering any of the dates in the matter, there is a bare conclusion that the provisions of 7A of the BLR Act would apply, but there is a reference to de-requisition of 24th July 1946 but treating Order of 17th July 1946 as a fresh allotment. It also recognizes that 17th July 1946 was a direction to the landlord to relet the subject premises to Mr. D. S. Laud but at the same time describes it as an allotment order.

12.8. He further submitted that by proceeding on the basis that there is an allotment of the premises on 17th July 1946, the

second impugned order appears to treat or impliedly treats Mr. DS Laud as an allottee under an ongoing requisition. It is on this basis that the provisions of the BLR Act have seem to have been applied.

12.9. In view of the above, Ld. Counsel submitted that the action of issuing Notice under Section 8C of the BLR Act itself is without jurisdiction as BLR Act does not apply where the subject property is derequisitioned before 1948. The powers contemplated under Section 8C of the BLR Act can only be exercised upon a person who is a “government allottee” and the Petitioner’s father at the time of issuance of this notice was not occupying the said premises as a government allottee but as a private tenant of Owner.

12.10. The judgments relied upon by the State to suggest that payment of rent would not affect the relationship of parties are wholly in apposite. Those are cases where rent or compensation is paid during the period of requisition or a subsisting requisition. When the requisition is in force, the Courts have held that the payment of rent or compensation does not bring about a relationship of landlord tenant. However, when there is an order of derequisition the rent receipt produced are evidence of the landlord tenant relationship after an Order of derequisition. The Petitioner’s father and grandfather have been

duly paying rent as a direct tenant to the Owner, who has also issued rent receipts from the year 1961 – 1986 in respect of the same. Therefore, the Respondent Nos.1 and 2 have acted beyond their jurisdiction whilst issuing the impugned Notice and Order.

12.11. Next submission is that the Impugned Orders ignore the provision pertaining to compulsory letting out of premises under Rule 81 (2) of the DoI Rules. The Order of 17th July 1946 specifically directed Mr. Dias that as per Rule 81(2) of the Defence of India Rules, the subject premises are to be let to Mr. D.S Laud from the date of withdrawal of the requisition Order. This Order is also referred to in the Order of derequisition dated 24 July 1946 passed by the Collector. Therefore, even the Collector at that time was conscious of the fact that upon the derequisition, the subject premises are to be let to Mr. D.S Laud. Therefore, on reading of these two orders it is clear that landlord tenant relationship is created by operation of law between Mr. Dias and Mr. D. S. Laud under the Rule 81(2) of the Defence of India Rules.

12.12. Mr. Jagtiani further submitted that, without prejudice to the above submissions, the impugned orders have been passed after 76 years of derequisitioning the subject premises and there is inordinate delay in taking action by the State Government. It is unjustified and cannot be sustained.

12.13. He submitted that although the Order granting liberty to file a suit is directed against the owner, that judicial order is a clear indication of the only way in which possession can be recovered by the Respondent No. 4. He submitted that occupants' occupation does not make the premises under continued requisition. He also submitted that the Impugned Order suffers from factual inaccuracies.

12.14. On these grounds, he submitted that the Impugned Orders are illegal, bad in law and ought to be quashed.

13. Mr. Patki, appearing for the State made following submissions:

13.1 He submitted that the said premises were requisitioned on 28th March, 1942, and continue to remain under 'requisition' until premises are released from requisition and the vacant and peaceful physical possession of the premises is delivered back to the owners. According to the State Authorities, the premises "continue to be requisitioned" for want of a formal "written Order" of releasing them from Requisition, and until the possession thereof is handed over, back to the landlords. He submitted that states' obligation towards the Landlord stands "discharged" only after delivering possession of the premises, back to the Landlord, in terms of 19B (2) of the Ordinance XLV of

1945 and Section 9 of the Maharashtra Land Requisition Act. 1948.

13.2 He further submitted that the possession of the property continued with Allotees or their heirs and has not been delivered to the Landlords and as such the provision of the Maharashtra Land Requisition Act. 1948 continue to apply to such premises. As such action initiated by State Authorities is perfectly legal.

13.3 He further submitted that the original order of requisition was passed under the DoI Act and the Rules framed thereunder. As the Act was to “expire”, an Ordinance i.e. the Requisitioned Land (Continuance of Powers) Ordinance 1946 came to be promulgated sometime in 1946, “validating” the Requisitions, which were made on or before the expiry of Act. The said ordinance provided for the “Continuance of Powers”, therefore, exercisable under the DoI Act, and the said rules. The said Continuance of Powers Act was passed, to continue certain powers under the DoI Act. It came into effect on 24th March 1947.

13.4 He further submitted that the Maharashtra Land Requisition Act 1948 was enacted to provide for “the requisition of land, for the continuance of requisition of land and for certain

other purposes”. On 22-07-2009, the Government of Maharashtra initiated action, wherein the Controller of Accommodation directed the Divisional Inspector, GAD Mantralaya, to visit the requisitioned premises and report about “the status” thereof. He invited our attention to pages 183 & 188 of Writ Petition No. 1836 of 2012 in support of this case.

13.5 Inviting our attention to pages 184 and 189 of Writ Petition No. 1836/2012, he further submitted that on 11-08-2009, the Divisional Inspector, carried out an inspection of all floors of Ruby Mansion in accordance with provision u/s 7 and 7A of the Bombay Land Requisition Act 1948, and forwarded his Report to the Controller of Accommodation. The Controller of Accommodation on finding that the Flats 4 and 5 on the 1st Floor have remained under “requisition” as Mr D. S. Laud continued in occupation as “government allottee”, show cause notices dated 6th November 2009 under Section 8C(2) of the BLR Act 1948 were issued to the Occupants, which are on record at page 178 of Writ Petition No. 1836/2012. Pursuant to said Notices, replies were filed and after hearing the parties, on 21st June 2010, the Controller of Accommodation, passed separate Orders, first directing Mr. Mangesh Laud (the occupant) to vacate the Flat No. 5 (Block 2) and second, directing Mrs. Kumud Fondekar (the occupant) to vacate respective premises within 30 days from date of receipt of the

Order.

13.6 He submitted that in Appeal filed by the Occupants, before the Appellate Authority i.e. Principal Secretary, GAD, Government of Maharashtra under Section 8(D) of the BLR Act, on 26th August 2011 by detailed Order, Appeals came to be dismissed, against which Occupants have filed their writ petitions.

13.7 He submitted that “the continuance of requisition orders” was made in the late 1940s and early 1950s or thereabouts, particularly of Residential premises, came to be struck down by the Bombay High Court in numerous cases following the Judgment in H.D. Vora case [(1984) 2 SCC 337]. The allottees of such requisitioned premises (except retired Government servants, who were allotted premises Requisitioned for the purpose of housing government servants and their legal representatives) continued in occupation, by reason of the interim orders. Having regard to the known difficulty of finding alternate accommodation in Bombay and other large cities in Maharashtra, the protection of these interim orders was continued until 30-11-1994, on which date all occupants of premises continued in occupation of requisitioned premises, were to be bound to vacate and hand over vacant possession to the State Government so that the State Government may, on or

before 31-12-1994, “derequisition” such premises and ‘hand back vacant possession’ thereof to the Landlords, in discharge of their obligations under the Act. Subsequently, the Hon’ble Supreme Court in Civil Appeal No. 2026 of 2000 i.e. **Maheshchandra Trikamji Gajjar Vs State of Maharashtra [(2000) 3 SCC 295]** while deciding the rights of a retired govt employee to continue in possession of a requisitioned premises, has held that the retired government allottee, retiring from Government Service has no right to continue in possession of allotted accommodation of requisitioned premises and will have to vacate as per the relevant rules after retirement.

13.8 He relied upon the case law reported in **Welfare Association vs Ranjit Gohil [(2003) 9 SCC 358]** and **The Grahak Sanstha Manch Case [(1994) 4 SCC 192]** and submitted that a landlord cannot, in effect and substance be deprived of his rights and title to property without being paid due compensation, and this is the effect of prolonged requisition. He argued that as there is no valid allotment orders in favour of any of the heirs of Mr. Laud, the original allottee. The State Government, in terms of the Supreme Court orders above have no option, but to take back possession of the premises and then hand over the vacant physical premises to the owners. Accordingly, the State Government has undertaken this exercise by following procedure under BLR Act and as a result, impugned

Orders are legally passed. He submitted that the State of Maharashtra is duty bound to take back the requisitioned premises, which the State does not require and hand it over back to the Landlords. In that view, he submitted that the petitions of the Occupants deserves to be dismissed.

REASONS AND CONCLUSIONS

14. The prayers made by Occupants are for a writ in the nature of certiorari which is actually the exercise of supervisory jurisdiction by this Court to make sure that the orders passed by the lower courts and authorities are within the four corners of law and there is no apparent illegality or perversity. Looking it from that angle the jurisdiction actually invoked is limited one. This will have to be borne in mind while appreciating and dealing with arguments advanced before us.

15. The first submission of the Occupants is that since the BLR Act has come into force on 11th April 1948 and two most important orders (one of compulsory letting and other of derequisition, at least on paper) dated 17th July 1946 and 24th July 1946, are passed prior thereto, the impugned notice issued under Section 8C(2) and impugned orders of Controller of Accommodation as well as Appellate Authority under the provisions of the Bombay Land Requisition Act, are without

jurisdiction and therefore null and void as well as exercised with malafide intention to assist the owner. This submission is devoid of any merits. We say so owing to what is provided in Section 7(1) of the Bombay Land Requisition Act, which reads as follows:

“7.(1) Notwithstanding anything contained in the Requisitioned Land (Continuance of Powers) Act, 1947, the [State] Government may, by order in writing, direct that any land which was continued under requisition under the said Act, shall continue to be subject to requisition under this Act [for any public purpose]] when it is released from requisition under the said Act or ceases to be subject to requisition for any reason; and the [State] Government may [for any such purpose] use or deal with the land so continued to be subject to requisition in such manner as may appear to it to be expedient.”

16. It is therefore clear that under the said provision, far and wide rights are given to the State Government under the BLR Act and the said rights are not limited by the provisions of the said Continuance of Powers Act. This has clear bearing on the issue at hand because it is one of the submissions of the Occupants that subject premises were requisitioned under Defence of India Rules / Defence of India Act and the requisitions made thereunder were validated the said Continuance of Powers Act and since this has taken place prior to BLR Act coming into force, the impugned notices and impugned orders are passed without jurisdiction. Since the existing requisitions including those sanctioned under the said

Continuance of Powers Act, are completely covered, it cannot be said that the impugned notice and the impugned orders are without jurisdiction.

17. In this respect the stand taken by the Respondent/State is important to be noted. The State has clearly submitted that the subject matter premises were requisitioned in March 1942, which continued to remain under requisition until the premises were released from requisition and vacant and peaceful physical possession thereof were delivered back to the owners and for want of handing over the possession to the owner, the said premises have continued to be requisitioned and as such, the State's obligation has not been discharged in terms of Section 19B(2) of the Defence of India (Fourth Amendment) Ordinance 1945 (No. XLV of 1945) and Section 9 of the BLR Act.

18. It is a matter of fact that physical possession of the said premises was never handed over to the owners and therefore, with such clear stand of State that its obligation is not discharged, the Orders dated 17th July 1946 and 24th July 1946 can not be interpreted to mean that de-requisition was complete in this case. Therefore, we have no hesitation to hold that in the present matter, the subject matter premises have continued to be under requisition and it cannot be said that the provisions of Bombay Land Requisition Act will not apply. Obviously therefore, the

impugned notices and the impugned order passed under Bombay Land Requisition Act are well within the jurisdiction.

19. The next submission on behalf of the occupants, is that the only legal remedy that the owner can adopt in the peculiar facts and circumstances of this case, is by filing suit because the predecessor of the occupant Mr. D.S. Laud was inducted as a tenant under compulsory letting as ordered under Rule 81(2) of the Defence of India Rules where Sub-Rule (bb) (iii) provides as under:

“81(2)(bb) for regulating the letting and sub-letting of any accommodation or class of accommodation, where residential or non-residential where the furnished or unfurnished and whether with or without board and in particular-

(i)

(ii) ...

(iii) for requiring such accommodation to be let either generally, or to specified persons or classes of persons, or in specified circumstances;”

20. These submissions have two aspects. First being the status of occupants’ predecessor as tenant and its continuation to his present legal heirs. The second aspect is proper remedy available to the owner.

21. So far as the arguments that the owner had earlier filed writ petitions and those were withdrawn with specific liberty taken from the Court for filing suit, and therefore, the owner is not entitled to seek possession by way of anything other than suit, there is no doubt that it is a matter of record that the owner had indeed filed earlier writ petition and it was withdrawn with liberty to file suit and thereafter again had filed writ petition, which was also dismissed as withdrawn when the Owner sought leave to withdraw with a view to file review of earlier order and the said review filed thereafter was also dismissed. This has an effect on what proceedings owner can or cannot file. However, this history of withdrawal orders passed in owner's writ petition with liberty to file a suit etc., can by no stretch of imagination affect the powers of the State to take appropriate action in accordance with law as provided under the provisions of the BLR Act. In that view of the matter, we are not required to deal with propriety of the owner in seeking possession under present writ petition. It is a matter of fact that Owner has not yet received possession and as such her cause of action is continuous and she can claim possession, which she has claimed, in one of the prayers of her writ petition.

22. So now, let us go to the other aspect of the submission viz. continuation of Mr. D.S. Laud as tenant of owner

by operation of law and continuation of present Occupants as his legal heirs in such capacity. Since, we have held that the property has remained under requisition, in our view the order dated 17th April 1946 read with Order dated 24th July 1946, cannot be interpreted to create tenancy between the then owner and Mr. D.S. Laud. Therefore, now his legal heirs cannot be permitted to take a stand that they are tenants and therefore only suit can be filed against them by the owner.

23. Next argument of the Occupants is that without considering any relevant dates, there is conclusion in the impugned order that provision of Section 7A of the BLR Act apply. It will not help the occupants, for the reason that wrong mention of section number or provision of law by the Authority, will not change the legal position about status and rights and liabilities between parties on the touchstone of facts of a particular case.

24. The next submission made on behalf of the Occupants is that the powers contemplated under Section 8C of the BLR Act can only be exercised upon a person who is a government allottee and not other person such as Petitioner's father (Mangesh) because he was not occupying the said premises as Government allottee but a private tenant of owner. This submission is stated only to be rejected. Perusal of Section 8C of

the BLR Act dealing with powers of Competent Authority to evict, shows that the range of persons in occupation covered thereunder are far and wide, sufficient to cover present Occupants. This argument is also rejected for the reason that we have held that the said premises have continued under requisition and no landlord-tenant relationship was created by operation of law. In any case, it is common ground before us that none of the legal heirs of Mr. D.S. Laud (original allottee) have continued to hold the position to serve the Government (civil supplies in the present case) which was the original purpose for which the order dated 17th July, 1946 was issued Rule 81(2) of the DoI Rules for the said premises.

25. The last submission made on behalf of the Occupants is that during the period from 1961 to 1986, their father and grandfather have been duly paying rent to the then owner and about 8 rent receipt copies are produced in support of such submission. This is a desperate attempt by the Occupants to cling on to a property. A landlord cannot be expected to continue with injustice of not having his own property at his disposal and at the same time, also not accept any compensation. It is too much to expect from an owner. Nonetheless, let's consider it from a dispassionate legal perspective.

26. In this regard it is material to note that the original legal relationship between the Owner and the Occupants was formed on the basis of the order dated 17th July 1946. The payment of compensation/rent by Mr.D.S Laud and his heirs and the acceptance thereof by the owners of the premises cannot have any effect in changing the original legal relationship between the Occupants and the Owners of the Requisitioned Premises. We have already held that this is not a case of letting by operation of law.

27. Hence, relying on the judgment of the Apex Court in the matter of *H.D.Vora vs State of Maharashtra, (1984) 2 SCC 337 (especially para 7)* and *Roy Estate Vs State of Jharkhand, (2009) 12 SCC 194 – (especially Para 29)* we hold that issuance of a few rent receipts by owner to the occupants in case of requisitioned premises, does not amount to change of legal relationship between them or any admission of landlord tenant relationship, especially when non-handing over of possession to Owner, has resulted in the said premises remaining under requisition.

28. Mr. Jagtiani has relied upon following judgments in support of his submissions.

1. Yashwant Govardhan V/s Tataram Avasu and Ors. (AIR 1958 Bom.28)

2. Varkey Patani and Ors. V/s. MCGM (WP (L) No.-6217 of 2022)
3. Kamal Galani and Ors Vs. Asst. Commissioner of Income Tax
4. Devilal Modi V/s. Sales Tax Officer Ratlam and Ors. (1965 1 SCR 686).
5. Shree Prakash Poddar V/s State of Maharashtra (2002 (3) Bom CR 655)
6. Anil Bafna V/s State of Maharashtra (2010 SCC Online Bom 704)
7. Ardeshir Banaji V/s.Union of India (1997 (1) Bom. CR 107)
8. A.P. Banaji V/s. Union of India (2007(4) Bom. CR 602)
9. All India Cotton Seeds Crushers Association V/s. State of Maharashtra (2019 SCC Online Bom 466)
10. Sargjua Transport Service V/s State Transport Appellate Tribunal M.P. Gwalior and Ors. (1987, Supreme Court Case 5)

In view of the fact that we have held that the subject matter property has continued to remain under requisition, the aforesaid judgments are distinguishable on facts and therefore do not advance the case of the occupants.

29. As a result of the aforesaid discussion, we are rejecting the arguments of Occupants made against the impugned Orders, which are concurrent findings of fact. There is no perversity or

error apparent on the face of the record and the impugned orders are based on material available before the authority having jurisdiction, leading to probable findings, not requiring any interference within our limited jurisdiction.

30. In view of the fact that we are dismissing the petitions of the Occupants, there is no need to consider and analyze the submissions of Mr. Doctor, learned Senior Counsel for the Owner and as a necessary consequence thereof, there is also no need to deal with submissions of Occupants in rejoinder thereto.

31. Writ Petition Nos. 1836 of 2012 and 1653 of 2012 are dismissed. Rule is discharged. No Order as to cost.

32. We have already rejected the argument of Occupants that suit is the only legal remedy available to Owner in this case. Being kept away from the recovery of rightful possession is a continuous cause of action for Owner. Therefore prayer clause (b) (ii) of Writ Petition No. 925 of 2012 by the Owner can be considered even at this stage, as a necessary consequence of dismissal of the Occupants' petitions and confirmation of the impugned Orders. It is material to note that under impugned Orders, the Occupants are directed to vacate the said premises and hand over the same to State Government. A specific stand is taken by the State Government in this matter that it is not legally

discharged unless possession of the requisitioned property is handed over back to Owner.

33. Therefore Writ Petition No. 925 of 2012 is allowed to the extent of issuing direction to the State Government to handover vacant and peaceful possession of the subject matter premises to the Petitioner therein i.e. the Owner, after taking its possession from the Occupants, within 8 weeks from today.

34. Rule is made absolute in above terms in Writ Petition No. 925 of 2012. No order as to the costs.

35. All pending notice of motions and chamber summons, if any, are disposed off in above terms.

36. All concerned to act on authenticated copy of this Order.

M.M.SATHAYE, J.

R.D.DHANUKA, J.