

IN THE HIGH COURT OF JUDICATURE AT BOMBAY.

APPELLATE CIVIL JURISDICTION.

WRIT PETITION NO. 2144 OF 1989.

Smt. Mary Kothare w/o Harish Kothare .. Petitioner.

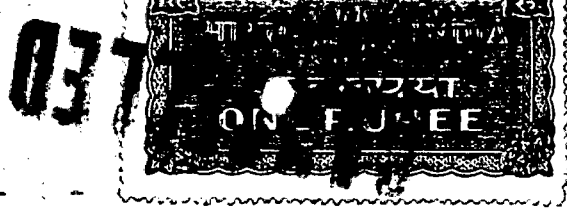
V/s.

Union of India & A nr..

Respondents.

I N D E X.

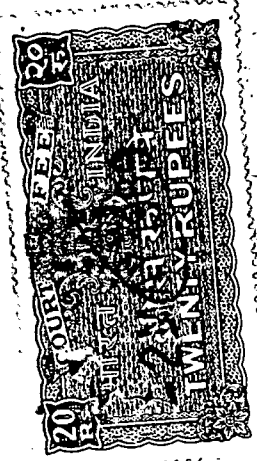
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

WRIT PETITION NO. 2144 OF 1989



In the matter of Article 227
of the Constitution of India
And

In the matter of the Public
Premises (Eviction of Un-
authorised Occupants) Act, 1971
And



In the matter of eviction order
dated 24-10-1988 passed by the
Competent Authority

And

In the matter of judgment and
order dated 18/19-1-1989 passed
by the Principal Judge of the
City Civil Court, Bombay, in
Miscellaneous Appeal No.
179 of 1988



Smt. Mary Kothare, wife of Harish)
Kothare, Indian Inhabitant,)
Room No. 164, Labour Tenement Colony,)
Mandala, Bombay-400 088) Petitioner

Versus

1. Union of India)
2. M. S. Rao,)
Director of Estate Management &)
Estate Officer, Govt. of India,)
Department of Atomic Energy,)
Anushaktinagar, Bombay-400094.) Respondent

To

THE HONOURABLE THE CHIEF JUSTICE AND OTHER
HON'BLE JUDGES OF THE HIGH COURT OF
JUDICATURE AT BOMBAY

THE HUMBLE PETITION OF THE
PETITIONER ABOVENAMED

MOST RESPECTFULLY SHEWETH:

1. The petitioner is a citizen of India domiciled in the State of Maharashtra. The petitioner's mother Nalini John Gracial and number of other tenants were the tenants were the tenants of two landlords viz: one Ratan Patil and another Vasu Shetty. Both of them had land at Chandivli village, Mankhurd, Mandala Nala, Sion-Trombay Road, Bombay. The lands of both the landlords were acquired under the Land Acquisition Act for the benefit of the Department of Atomic Energy, Govt. of India, Anushakti Nagar, Deonar, Bombay-94. All the occupants including the petitioner's mother were offered alternate accommodation as the Department were interested in constructing buildings for their offices. Accordingly all the occupants including the petitioner's mother vacated the said land and shifted in the present colony known as 'Mandala Labour Tenements', being Survey No.85 (Part). There are about 176 tenements, all used for residence. They are constructed on the land admeasuring 9,012 Sq.Mtrs. The structures were originally constructed in 1964 by the Department of Atomic Energy. There are about 52 single room tenements admeasuring 10' x 10' each. The remaining are double room tenements admeasuring 20' x 10' each.

2. The petitioner's mother and one Harisingh Gurkha were staying together. Since her mother was not legally married, both of them were staying together in Tenement No. 164, the said Tenement No. 164 allotted in the new Colony stood in the name of Harisingh Gurkha. The said allotment was done by a letter dated 20-1-69. Hereto annexed and marked Exhibit "A" is a copy of the said letter dated 20-1-69. Since 1970 the said Harisingh Gurkha has left the premises and the petitioner and her mother alone are staying in the said tenement. However, in the records of the respondents the name of Harisingh Gurkha continued. The petitioner's mother also expired on 30-4-1985. The petitioner was then staying ~~xxx~~ alone in the said Tenement No. 164.

Ex. "A"

3. The petitioner thereafter married to one Harish Kothare. All the occupants were required to pay the monthly compensation of Rs. 16/= by way of service charges. The petitioner's mother paid the said amount. She also paid the necessary security deposit for the tenement for which necessary receipts were issued by the Department of Atomic Energy. The petitioner has a ration card and other relevant documents to show that her mother was residing in the premises since 1969 and prior to that her mother was residing in the old premises as a tenant, though she could not produce the rent bills.

4. A show cause notice dated 30-5-86 was issued by the Land Records & Survey Officer of the Department of Atomic Energy, which was addressed to Gurkha Harisingh stating that he had sublet the premises to the petitioner. It was stated in the notice that the subletting was prohibit. The allotment order issued

told that the judgment copy was not received. The petitioner therefore changed her advocate and signed a Vakalatnama in favour of Advocate Shri M.P. Vashi after obtaining the no objection from Advocate Shri Shetty.

11. On 29-1-89 an application was made before the Ld. Judge for extension of time. When she went for obtaining the No Objection on 27-4-89, the petitioner was handed over a copy of the judgment by Advocate Shetty. Mr. Shetty said that the copy of the judgment was received only 8 days back. As there was not enough time to prepare the petition, Advocate Mr. M. P. Vashi moved the Learned ^{Principal} Judge on 28-4-89 for extension of time. Though the Vakalatnama was filed after taking no objection, an objection was raised that once the proceedings were disposed of, a new advocate cannot come on record and since Mr. Shetty was not present, the petitioner was asked to appear before the Principal Judge. Accordingly the petitioner herself appeared in person before the Ld. Principal Judge. He, however, refused to extend the time stating that the judgment copy was delivered to Mr. Shetty on 10-4-89 and not eight days prior to 28-4-89. Though the petitioner tried to explain that she had not received the copy of judgment from Advocate Shetty in spite of her contacting him on number of occasions, the Ld. Principal Judge refused to extend the time to enable her to file a petition in the High Court. Hereto annexed and marked Exhibit "H" is a copy of the judgment and order dated 18/19-1-89 delivered by the Principal Judge of the City Civil Court, Bombay in the said Misc. Appeal No.179 of 1988.

Ex. "H"

12. Being aggrieved by the said judgment and order dated 18/19-1-89, the petitioner begs to approach this Hon'ble Court and prays that a writ of certiorari, writ of mandamus or any other appropriate writ, order or direction be issued calling for the records and after examining the proprieties and legalities of the impugned decision, be pleased to quash and set aside the same on the following among other grounds:-

(a) The petitioner says that the proceedings are totally bad and illegal. The petitioner and her husband are not issued a show cause notice under Section 4. Under Section 4 of the Public Premises Act it is necessary to give a notice to all the occupants. Admittedly the petitioner and her husband are occupants within the meaning of Section 4. Notice u/s 4 having not been given, the proceedings are totally bad and illegal and they are liable to be quashed.

(b) The notice was issued to Harisingh Gurkha, who is not residing in the premises since 1970. The 2nd respondent and all other officers of the Department know very well that the petitioner and her mother were staying in the premises till 1985 and after 1985 the petitioner and her husband are the only persons who are residing in the premises.

(c) The petitioner submits that the respondents have no right to adopt the proceedings of eviction. The first respondents had accepted the proposal to convey the land and the structures to the Society. The same is recorded by a letter dated 29.2.80. The Society is now registered as contemplated in the said letter. Out of the total amount of Rs. 8,30,000/- an

MD

amount of Rs. 2,75,000/- has already been paid.

Number of orders have been passed in respect of different tenements.

(d) The Society and some of the office bearers of the Society have filed a suit on the Original Side of this Hon'ble Court being Suit No. 1172 of 1988 for specific performance of the said contract as recorded in the letter dated 29-2-80.

In the said suit a prayer is made that pending the hearing and final disposal of the suit, the defendants, their officers, servants, agents and employees be restrained by an order and injunction of the court from executing the eviction order and/or from adopting eviction proceedings against the other members of the Society, or directly dealing with the members of the Society with regard to the sale, transfer or assignment of the tenements. The Society has also taken out a Notice of Motion, being Notice of Motion No. 1120 of 1988. Prayer (a) of the Notice of Motion in the said suit reads as under:-

That pending the hearing and final disposal of the suit, the defendants, their officers, servants, agents and employees be restrained by an order and injunction of this Hon'ble Court from executing the said eviction order and/or from adopting any eviction proceedings against other members of the first plaintiffs Society, or directly deal with any of the members of the society with regard to the sale, transfer or assignment of their tenements".

On 13-4-88 Hon'ble Justice Shri Guttal passed an order in terms of prayer (a). In view of the said proceedings the respondents are not entitled to proceed with the eviction proceedings. Whether the Society is entitled to the specific performance or not is yet to be decided in the said suit. The Society is ready

and willing to accept the petitioner as a member of the Society since Harisingh Gurkha is no longer alive and the members of the Society know that the petitioner and her husband are the only two persons residing in the premises. The petitioner craves leave to rely upon the proceedings in Suit No. 1172 of 1988.

(e) The petitioner says that since Gurkha Harisingh is not heard from 1970, he is therefore presumed to be dead having not been heard for more than seven years.

(f) The reasoning given by the 2nd respondent and the Principal Judge is totally perverse. The Ld. Principal Judge erred in observing that the original letter being in the name of Harisingh Gurkha, the petitioner or her mother cannot have any right, title or interest in the premises.

(g) The petitioner says that the reference to the land acquisition proceedings was totally irrelevant. There was no challenge to the land acquisition proceedings, while the Ld. Principal Judge referred to so many things about the acquisition proceedings.

(h) The Ld. Principal Judge did not refer to various ~~xx~~ submissions made in the Appeal Memo on behalf of the Appellant-petitioner. One of the contentions was ~~x~~ that the petitioner was not issued a notice under Section 4 of the Public Premises Act. That point has not been decided.

13. The petitioner demanded justice but the same is denied to her. There is no other alternative and efficacious remedy available to the petitioner and the

reliefs that will be granted by this Hon'ble Court will be just, complete and effective.

(X)

The petitioner, therefore, prays:-

- (a) That a writ of certiorari, a writ of mandamus or any other appropriate writ, order or direction be issued calling for the records and after examining the proprieties and legalities of the impugned order dated 24-10-1988 passed by the 2nd respondent and the judgment and order dated 18/19-1-89 delivered by the Principal Judge of the City Civil Court, Bombay, be pleased to quash and set aside them.
- (b) That pending the hearing and final disposal of the petition, the eviction order dated 24-10-88 passed by the 2nd respondent for eviction of tenement No. 164, Labour Tenement Colony, Mandala, Bombay-400 088 be stayed.
- (c) That ad-interim stay in terms of prayer (b) be granted.
- (d) That the costs of the petition be provided for.
- (e) Such other and further reliefs be granted as this Hon'ble Court may deem fit.

M. K. M.
Petitioner

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