

Mr. Aurup Dasgupta a/w. Ms. Sonam Ghiya and Ms. Drshika Hemnani i/b. Jhangiani, Narula and Associates for Respondent Nos.9 and 10.

Pronounced on: 05TH DECEMBER, 2024

The question that arises for consideration in this writ petition is, as to whether respondent No.17 - Estate Officer, under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, hereinafter referred to as the 'Public Premises Act', has the jurisdiction to entertain an eviction petition filed by respondent No.1 i.e. Board of Mumbai Port Authority against the petitioners.

2. According to the petitioners, their predecessor and consequently they always had protection under Rent Control Legislations i.e. the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bombay Rent Control Act), earlier in point of time and now, the Maharashtra Rent Control Act, 1999. If the objection as regards jurisdiction raised by the petitioners is accepted, the eviction proceeding initiated by the respondent No.1 before the respondent No.17 will be

nipped in the bud and if held otherwise, the proceeding will continue before the respondent No.17.

3. The chronology of events, in brief, leading to filing of the present petition is that the Estate Manager of the predecessor of respondent No.1 i.e. Port of Bombay proposed to grant on lease a plot of land situated at Mazgaon Reclamation Estate, Mumbai. In that regard, the Estate Manager sent a letter to one Dara Sidhwa (predecessor-in-title of the petitioners), specifying the proposed terms and conditions of grant of lease for the said plot. After exchange of communications for certain modifications made to the said proposed terms and conditions, on 23.04.1962, the final form of the terms and conditions was determined and by letter dated 04.09.1962, the Estate Manager confirmed the grant of lease to the predecessor of the petitioners.

4. As per clause (v) of the terms and conditions, the predecessor of the petitioners constructed a six-storey building on the said plot of land in the year 1970 and portions of the said building were sublet. It is relevant to note that in the meanwhile, on 28.02.1964, the Bombay Port Trust was created under Section 5 of the Major Port Trusts Act, 1963. Subsequently, it was renamed as respondent No.1 i.e. Mumbai Port Authority.

5. In the year 1971, the erstwhile Public Premises Act of 1958 was replaced by the Public Premises Act of 1971. On 20.12.1980, by an Amending Act, the Public Premises Act was amended to specifically include board of trustees constituted under the Major Port Trusts Act, 1963 in the definition of 'public premises'. In the context of the contentions raised on behalf of the rival parties, it is relevant to note that the Bombay Rent Control Act was amended in the year 1953 to add sub-section (4) in Section 4 of the said Act. This had a bearing on Section 4(1) thereof, which specified that the provisions of the Bombay Rent

Control Act would not apply to any premises belonging to the Government or a local authority. It is to be noted that Section 4(4)(a) of the Bombay Rent Control Act carved out as an exception to Section 4(1) thereof. On 31.03.2000, the Maharashtra Rent Control Act was enacted and it replaced the Bombay Rent Control Act.

6. On 19.06.2010, the respondent No.1 terminated the lease by issuing a termination letter, stating various grounds for the said action. Since the predecessor-in-title of the petitioners had expired on 19.11.2001, his legal heirs responded to the said letter. In this backdrop, on 29.08.2013, respondent No.1 filed eviction petition before the respondent No.17 - Estate Officer for eviction of the petitioners from the premises on various grounds. The respondent No.1 prayed for a decree and order to be issued to the petitioners to handover vacant and peaceful possession of the premises described in Exhibit-A i.e. the aforesaid plot of land situated at Mazgaon Reclamation Estate, Mumbai. On 29.05.2015, the petitioners filed their written statement and claimed that the aforesaid premises were not covered under the definition of 'public premises' and that the petitioners enjoyed the protection of the Bombay Rent Control Act and thereafter, the Maharashtra Rent Control Act. On 28.03.2019, the Estate Officer finalized 13 issues to be decided in the eviction petition. These included issue Nos.1 and 3, which read as follows:-

“1. Whether the Petitioners prove that the learned Estate Officer has jurisdiction to try, entertain and dispose of the Petition?

...

3. Whether the subject premises are ‘public premises’ within the meaning of Section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (Act of 1971)?”

7. On 24.02.2021, the petitioners filed miscellaneous application

praying for the above-quoted issues to be decided as jurisdictional issues. After pleadings were completed in the said application, the petitioners filed a further miscellaneous application on 26.12.2022 to clarify and further elaborate the jurisdictional issues. The pleadings in the said application were also completed. The Estate Officer heard arguments on the said issues and by the impugned order dated 22.11.2023, dismissed the application, holding that the petitioners could not claim the protection of the Bombay Rent Control Act and thereafter, the Maharashtra Rent Control Act. It was held that the Estate Officer did have jurisdiction to entertain the eviction petition filed by the respondent No.1. Aggrieved by the same, the petitioners filed the present petition. It was heard and written submissions were submitted by the rival parties.

8. Mr. Darius Khambata, learned senior counsel appearing for the petitioners submitted that in the present case, the premises or plot of land in question first came to be included in the definition of 'public premises' under Section 2(e) of the Public Premises Act by way of amendment with effect from 20.12.1980. It was submitted that prior to the said date, the said plot of land was not included in the definition of 'public premises' and since the lease was granted in favour of the predecessor of the petitioners in the year 1962, the Public Premises Act was not applicable at that point in time. On this basis, it was submitted that the predecessor of the petitioners and consequently, the petitioners clearly had protection of the Bombay Rent Control Act, thereby indicating that the eviction petition before the respondent No.17 - Estate Officer is not maintainable.

9. It was further submitted that even if the exemption available to premises belonging to the Government or a local authority under Section 4(1) of the Bombay Rent Control Act was to be taken into consideration, Section 4(4)(a) added to the Bombay Rent Control Act in the year 1953

carved out an exception, which operated in favour of the predecessor of the petitioners and consequently, the petitioners. On this basis, it was submitted that since the lease itself was granted in the year 1962, due to the benefit of the exception carved out under Section 4(4)(a) of the Bombay Rent Control Act, protection of the provisions of the said Act was all along available in respect of the premises in question. It was further submitted that in this context, clause (v) of the lease assumes great significance as it necessarily required the predecessor of the petitioners to construct a building, costing a minimum of Rs.1 lakh, within 15 months from the date the site was handed over. It was submitted that in the context of such factual position, this Court in judgements in the cases of *Zunshi Bhanu Yadav Vs. Tukaram Raghoo Chavan*, **1993 Mh.L.J. 859** and *Lockwood Industrial and Transport Services, Bombay Vs. Victoria Timber Supplying Company, Bombay*, **2010 (1) Mh.L.J. 187** had held that when a building is constructed in terms of a lease or agreement with the Government or a local authority, the protection under Bombay Rent Control Act is available. In this context, reference was also made to other judgements, but particular emphasis was placed on judgement of this Court in the case of *Ram Bhagwandas Vs. Municipal Corporation of the City of Bombay*, **AIR 1956 Bom.364** and judgements of the Supreme Court in the case of *Kanji Manji Vs. Trustees of the Port of Bombay*, **AIR 1963 SC 468** and *Nagji Vallabhji and Company Vs. Meghji Vijpar and Company*, **(1988) 3 SCC 68**.

10. On the basis of the said judgements, it was claimed that specific clauses in the lease in the present case clearly indicated that the protection of the Bombay Rent Control Act and thereafter the Maharashtra Rent Control Act is clearly available to the petitioners, thereby indicating that the respondent No.17 - Estate Officer cannot entertain the petition filed by the respondent No.1. It was further

submitted that once it is established that protection of the Bombay Rent Control Act was always available, the law clarified by the Supreme Court in the case of *Suhas H. Pophale Vs. Oriental Insurance Company Limited*, **(2014) 4 SCC 657**, applied in favour of the petitioners. On this basis, it was claimed that inclusion of the premises belonging to the respondent No.1 in the definition of 'public premises' with effect from 20.12.1980 cannot take away the protection available to the predecessor of the petitioners and consequently, the petitioners under the Bombay Rent Control Act. It was submitted that although a Co-ordinate Bench of the Supreme Court, by an order dated **17.03.2015** passed in **Special Leave to Appeal (Civil) No.35859 of 2014** (*Life Insurance Corporation of India Vs. Vita Private Limited*) observed that the ratio of the judgement in the case of **Suhas H. Pophale Vs. Oriental Insurance Company Limited** (*supra*) is contrary to Constitution Bench judgement in the case of *Ashoka Marketing Vs. Punjab National Bank*, **(1990) 4 SCC 406** and on that basis, directed to place the said petition before the Chief Justice of India for constituting a three-Judge Bench, so long as the judgement in the case of **Suhas H. Pophale Vs. Oriental Insurance Company Limited** (*supra*) is holding the field, the petitioners are entitled to claim benefit under the same.

11. It was further argued that the respondent No.17 - Estate Officer erred in relying upon judgement of this Court passed in the case of *Board of Trustee of Port of Mumbai Vs. New India Assurance Co. Ltd.*, **2018 (5) Mh.L.J. 754**, for the simple reason that, in the said case, this Court was not called upon to consider the effect of Section 4(4)(a) of the Bombay Rent Control Act and that the nature of the lease in the said case was different from the one in the present case. On the basis of the aforesaid submissions, the learned senior counsel for the petitioners prayed that the writ petition may be allowed in terms of prayer clauses (a) and (b).

12. On the other hand, Mr. Girish Godbole, learned senior counsel appearing for respondent No.1 submitted that the contentions raised on behalf of the petitioners on the basis of the aforesaid judgements of this Court and the Supreme Court are unsustainable because they are based on an erroneous premise. It was submitted that a perusal of the eviction petition filed by the respondent No.1 before the respondent No.17 - Estate Officer, particularly the prayer clauses read with exhibit-A i.e. the Schedule of the premises, would show that the petition pertains to eviction of the petitioners from the land / plot that was the subject matter of the lease granted in favour of the predecessor of the petitioners. Respondent No.1, as a local authority, is seeking eviction of the petitioners from the land in question and it has nothing to do with the building constructed upon the same by the predecessor of the petitioners in the year 1970. According to the learned senior counsel appearing for respondent No.1, the whole foundation, on which detailed submissions have been made on behalf of the petitioners, does not exist as a matter of fact, and therefore, the petition deserves to be dismissed.

13. In this regard, the learned senior counsel for the respondent No.1 specifically referred to the clauses of the lease and it was submitted that clause (v) thereof, upon which the petitioners have placed much reliance, in no manner, indicates that the position of law laid down by this Court and the Supreme Court can assist the petitioners in the present writ petition.

14. It was submitted that there could not be any quarrel with the position of law laid down by the Supreme Court in the case of **Kanji Manji Vs. Trustees of the Port of Bombay** (*supra*) and **Nagji Vallabhji and Company Vs. Meghji Vijpar and Company** (*supra*) and by this Court in the case of **Zunshi Bhanu Yadav Vs. Tukaram Raghoo Chavan** (*supra*) and **Lockwood Industrial and Transport**

Services, Bombay Vs. Victoria Timber Supplying Company, Bombay (*supra*). It was submitted that in all these judgements, the protection available under the Bombay Rent Control Act was identified and specified in the context of sub-lessees / tenants / sub-tenants, who had taken portions of building constructed on the land taken on lease by the lessee. It was submitted that the protection contemplated under Section 4(4)(a) of the Bombay Rent Control Act and recognized in the said judgements was available to sub-lessees / tenants / sub-tenants as against the original lessee and it could certainly not inure to the benefit of the lessee as against the original lessor, which in the present case, is the respondent No.1.

15. Much emphasis was placed on the reason why sub-section (4) was introduced in Section 4 of the Bombay Rent Control Act in the year 1953 by asserting that the said amendment was brought about to nullify the effect of the judgement of the Supreme Court in the case of *M/s. Bhatia Co-operative Housing Society Limited Vs. D. C. Patel*, **AIR 1953 SC 16**. By referring to the said judgement and the purpose for which the amendment was brought about in the year 1953, it was submitted that by no stretch of imagination could the protection of the Bombay Rent Control Act be available to the predecessor of the petitioners and consequently, the petitioners under Section 4(4)(a) of the Bombay Rent Control Act.

16. It was further submitted that a perusal of the Maharashtra Rent Control Act would show that open land is not covered under the definition of 'premises' and therefore, this is an additional ground to demonstrate that protection under the said Act is also not available to the petitioners. In this backdrop, it was submitted that the respondent No.17 - Estate Officer correctly applied the position of law in the facts of the present case. Once it was established that from the very beginning, the

premises / plots of land were exempted from the operation of the Rent Control Legislation, even if the position of law clarified by the Supreme Court in the case of **Suhas H. Pophale Vs. Oriental Insurance Company Limited** (*supra*) was to be accepted, since no protection was ever available to the predecessor of the petitioners and consequently, the petitioners, it was correctly held by the respondent No.17 - Estate Officer that the issue of jurisdiction had to be answered in favour of respondent No.1. On this basis, it was submitted that the writ petition deserved to be dismissed.

17. The crucial question, in the present case, is as to whether Section 4(4)(a) of the Bombay Rent Control Act, as interpreted by judgements of the Supreme Court and this Court, carves out protection for the predecessor of the petitioners and consequently, the petitioners by applicability of the said Act and thereby leads to a situation where the eviction petition filed by the respondent No.1 under the provisions of the Public Premises Act is rendered not maintainable. If it is found that such protection is available then the position of law laid down by the Supreme Court in the case of **Suhas H. Pophale Vs. Oriental Insurance Company Limited** (*supra*) would apply in full force in favour of the petitioners. Section 4 of the Bombay Rent Control Act reads as follows:-

“4. Exemption

(1) This Act shall not apply to any premises belonging to the Government or a local authority or apply as against the Government to any tenancy. licence or other like relationship created by a grant from or a licence given by the Government in respect of premises requisitioned or taken on lease or on licence by the Government, including any premises taken on behalf of the Government on the basis of tenancy or of licence or other like relationship by, or in the name of any officer subordinate to the Government authorised in this behalf; but it shall apply in respect of premises let, or given on licence, to the Government or a local authority or taken on behalf of the Government on such basis by, or in the name of, such officer.

(1A) On and from such date as the State Government may, by notification in the Official Gazette, appoint, in the areas to which provisions of Part II apply under section 6 to premises let or given on licence for any of the purposes referred to in that section, the provisions relating to standard rent and permitted increases shall, notwithstanding anything contained in this Act, not apply for a period of five years to any premises the construction or reconstruction of which is completed on or after such date:

Provided that, nothing in this sub-section shall apply:-

(a) to premises referred to in sections 17B and 17C;

(b) to premises which are constructed or reconstructed in any housing scheme undertaken by Government or the Maharashtra Housing and Area Development Authority or of any of its Boards established under section 18 of the Maharashtra Housing and Area Development Act, 1976 or in any housing scheme undertaken by any person in pursuance of any exemption or sanction granted by the State Government under the provisions of section 20 or 21 of the Urban Land (Ceiling and Regulation) Act, 1976, for sale thereof to persons belonging to economically weaker sections of the people and to whom such premises are sold.

Explanation.- For the purposes of this sub-section,

(a) the period of five years shall be computed from the date on which the completion certificate in respect of such premises is issued or if the premises are occupied without obtaining completion certificate, then the date from which such premises are assessed for the first time, whichever is earlier;

(b) the expression "person belonging to economically weaker sections of the people" means a person whose total monthly household income from all sources is less than rupees seven hundred per month.

(2) The State Government may direct that all or any of the provisions of this Act shall not be subject to such conditions and terms as it may specify, apply generally,

(i) to premises used for a public purpose of a charitable nature or to any class of premises used for such purpose;

(ii) to premises held by a public trust for a religious or charitable purpose and let or given on licence, at a nominal or concessional rent or licence fee or charge; or

(iii) to premises held by a public trust for a religious or charitable purpose and administered by a local authority.

(3) The State Government may also by order direct that all or any of the provisions of Part III shall not apply to such hostel institutions or such class of hostels or institutions subject to such terms and conditions, if any, as may be specified in the order.

(4)(a) The expression "premises belonging to the Government or a local authority" in sub-section (1) shall, notwithstanding anything contained in the said sub-section or in any judgement, decree or order of a court, not include a building erected on any land held by any person from the Government or a local authority under an agreement, lease, licence or other grant, although having regard to the provisions of such agreement, cause, licence or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be; and

(b) notwithstanding anything contained in section 15 such person shall be entitled to create a tenancy in respect of such building or a part thereof whether before or after the commencement of the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1959."

18. In this context, much emphasis was placed by the learned senior counsel appearing for the petitioners on clause (v) of the lease granted in favour of the predecessor of the petitioners, whereby he was required to construct a building on the premises / plot. It was submitted that since construction of the building was an integral part of the lease and hence, an agreement with the respondent No.1, it was a situation distinguishable from the situation where the lessee would construct a building voluntarily without reference to the lease / agreement with the Government or a local authority. It was claimed that since the building in question on the premises / plot in the present case was admittedly constructed in terms of the lease with the respondent No.1, the interpretation of Section 4(4)(a) of the Bombay Rent Control Act clarified by this Court in the case of **Zunshi Bhanu Yadav Vs. Tukaram Raghuo Chavan** (*supra*) and **Lockwood Industrial and Transport Services, Bombay Vs. Victoria Timber Supplying**

Company, Bombay (*supra*) on the basis of the law laid down by the Supreme Court in the case of **Kanji Manji Vs. Trustees of the Port of Bombay** (*supra*) and **Nagji Vallabhji and Company Vs. Meghji Vijpar and Company** (*supra*), clearly inured to the benefit of the petitioners and hence, the present petition deserves to be allowed.

19. This Court is of the opinion that reliance placed on the aforementioned judgements on behalf of the petitioners is misplaced because the position of law clarified therein applies to sub-lessees of the original lessee and not to the relationship and status of the original lessee with the lessor, in this case, the respondent No.1. To that extent, the contentions raised on behalf of the respondent No.1 are correct. This is evident from the purpose for which sub-section (4) was added by way of amendment to Section 4 of the Bombay Rent Control Act. The contents of the Bill of the year 1953 to amend the Bombay Rent Control Act are relevant in the present case. The same was published in the Bombay Government Gazette on 28.02.1953 and it reads as follows:-

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Bombay Government Gazette

PUBLISHED BY AUTHORITY

SATURDAY, 28TH FEBRUARY 1953

PART V

[To be translated into Marathi, Gujarati, Kannada and Hindi (in Devnagari script) and the translations to be published in the ‘Bombay Government Gazette’. The dates of publication to be reported.]

The following Bill is published under the proviso to rule 80 of the Bombay Legislative Assembly Rules:-

L. A. BILL No.XX OF 1953

A Bill to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

WHEREAS it is expedient to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, for the purposes hereinafter appearing. It is hereby enacted as follows:-

1. This Act may be called the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1953.
2. In section 3 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter referred to as the said Act, in sub-section (2), for the figures "1953" the figures "1954" shall be substituted.
3. In section 4 of the said Act, after sub-section (3), the following sub-section shall be added and be deemed always to have been added, namely:-

“(4)(a) The expression "premises, belonging to the Government or a local authority" in sub-section (1) shall, notwithstanding anything contained in the said sub-section or in any judgment, decree or order of a court, not include a building erected on any land held by any person from the Government of a local authority under an agreement, lease or other grant, although having regard to the provisions of such agreement, lease or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be; and

(b) notwithstanding anything contained in section 15 such person shall be entitled to create a tenancy in respect of such building or a part thereof.”
4. The Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1952, is hereby repealed.

STATEMENT OF OBJECTS AND REASONS

The life of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, expires after the 31st March 1953. The housing shortage is still very acute in several places in this State including places to which Parts II and III of the Act have been applied. It is, therefore, necessary to extend the life of the Act by a further period of one year from 1st April 1953 to 31st March 1954. Government had appointed a Committee to inquire into the working of the whole Act. The Report of the Committee has only recently been received and would need time for consideration. The *status quo* is, therefore, sought to be preserved pending consideration of the Report by extending the life of the Act for one year.

It is also necessary to repeal Bombay Ordinance I of 1952 and to re-enact the provisions thereof. The Supreme Court in its judgment on a case before it had decided that the premises which were on land taken on lease from the Bombay Municipal Corporation, should be held as belonging to the local authority and that, under section 4 (1) of the Bombay Rents, Hotel and, Lodging House Rates Control Act, 1947, such premises were exempt from the operation of the Act. The interpretation put by the Supreme Court on the lease would have led to the exclusion from the Act of all the numerous premises built on lands leased from Government or a local authority and would have deprived thousands of people from the benefit of the Act and made them victims of the evils of puggree, unrestricted rents, wanton eviction, etc. In order to avoid unnecessary complications which might have arisen in consequence of the Supreme Court's judgment, it was necessary to take immediate steps to amend section 4 of the Act suitably, so that the

provisions of the Act would definitely cover premises erected on lands leased from Government or a local authority, As the Legislature was not in session, Ordinance No. I of 1952, to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, for the purpose mentioned above, was promulgated.

The Bill proposes to achieve the above objects. In re-enacting the provisions of the Ordinance care has been taken to clarify the purpose for which the Ordinance was promulgated.

(Signed) G. D. TAPASE

Dated the 28th February 1953.

By order and in the name of the Governor of Bombay,

J.R. DHURANDHAR,
Additional Secretary to the Government of Bombay,
Legal Department,

Bombay, dated the 28th February 1953.

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20. A perusal of the above-quoted contents of the Bill shows that the amendment was necessitated because of the law laid down by the Supreme Court in the case of **M/s. Bhatia Co-operative Housing Society Limited Vs. D. C. Patel** (*supra*) in the context of Section 4(1) of the Bombay Rent Control Act. The said judgement laid down that even the sub-tenants or sub-lessees of the original lessee of the land belonging to the Government or a local authority could not claim protection of the Rent Control Legislation. In this situation, it was found that the said position of law would have operated to the detriment of thousands of people, who occupied portions of such buildings constructed on land belonging to the Government or a local authority. This would make them vulnerable to unrestricted rents and eviction as they would be denied the benefits of the Bombay Rent Control Act. Thus, the purpose of introducing Section 4(4)(a) to the Bombay Rent Control Act was to provide protection to such sub-lessees of the original

lessee. Therefore, protection of the Bombay Rent Control Act and thereafter, the Maharashtra Rent Control Act would be available to sub-lessees / tenants / sub-tenants of the original lessee. It is the relationship *inter se* between the lessee and his sub-lessees / tenants / sub-tenants that would be governed by the Rent Control Legislations and it has nothing to do with the premises i.e. the land belonging to the Government or a local authority leased out to the original lessee. In this context, paragraph 9 of the judgment of the Supreme Court in the case of **Nagji Vallabhji and Company Vs. Meghji Vijpar and Company** (*supra*) is relevant and it reads as follows:-

“9. It was urged before us by Dr. Chitale that, if the sub-lessee in a building put up by a lessee on land leased from the Government or a local authority under a building lease is entitled to the protection of the Bombay Rent Act under the provision of Section 4(4)(a) thereof, there is no reason why such protection should be denied to a sub-lessee in any building belonging to the Government or a local authority and taken on lease by a private party regardless of the question as to who has put up the building. That may or may not be so but what we have to examine is whether the intention to confer such protection can be imputed to the legislature on the language of the said sub-section read in the context of the relevant provisions of the Bombay Rent Act. The plain reading of sub-section (1) of Section 4 makes it clear that the provisions of the Bombay Rent Act are not applicable to premises belonging to the Government or a local authority. Sub-section (4)(a) only takes out from the scope of the exemption conferred by Section 4(1) "a building erected on any land held by any person from the Government or a local authority under an agreement, lease, licence or other grant, although having regard to the provisions of such agreement, lease, licence or other grant, although having regard to the provisions of such agreement, lease, licence or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be". If this provision were to be construed as including any building put up or erected on land held by any person from the Government or a local authority, the result would be that such protection would be available even against the Government or a local authority and the provisions of sub-section (1) of Section 4 may be rendered largely nugatory. It is not disputed by Dr. Chitale that the provisions of sub-section 4(a) were never intended to take away the immunity conferred upon the

premises belonging to the Government or a local authority and if the provisions of Section 4(4)(a) were to be construed as urged by Dr. Chitale this immunity would be rendered practically nugatory. In fact, a plain reading of the provisions of sub-section (4)(a) in the context clearly shows that there is no intention therein to take out a building put up by the Government or a local authority from the scope of the exemption conferred by sub-section (1) of Section 4. In fact, the language of sub-section (4)(a) and sub-section (1) of Section 4 of the Bombay Rent Act read together suggests that it was only in respect of a building put up by the lessee on the Government land or land belonging to a local authority under a building agreement that the sub-lessees were taken out of the exemption contained in sub-section (1) of Section 4 and allowed the benefit of the provisions of the Bombay Rent Act. It is significant that the exemption granted under the earlier part of sub-section (1) of Section 4 is in respect of the premises and not in respect of the relationship. In order to confer the protection of the provisions of the Bombay Rent Act to the sub-lessees occupying the premises in any building erected on Government land or on land belonging to a local authority irrespective of the question who has put up the building as against the lessees of the land but without affecting the immunity conferred to the Government or local authorities as contemplated by sub-section (1) of Section 4 of the Bombay Rent Act, we would have to practically rewrite the provisions of Section 4 and it is not open to us to do that. We are, therefore, unable to accept the argument of Dr. Chitale and we are of the view that the learned Judge of the High Court of Bombay was right in coming to the conclusion that the premises in question were not entitled to the benefit of the provisions of the Bombay Rent Act.”

21. The said aspect is also clear from the observations of the Supreme Court in paragraphs 11 to 13 of the judgement in the case of **Kanji Manji Vs. Trustees of the Port of Bombay** (*supra*), which read as follows:-

“11. At first, an Ordinance and later, an Act were passed to nullify the effect of this ruling by the addition of sub-section 4(a). That sub- section now reads as follows:

‘(4) (a). The expression 'premises belonging to the Government or a local authority' in sub-section (1) shall, notwithstanding anything contained in the said sub-section or in any judgment, decree or order of a

Court, not include a building erected on any land held by any person from the Government or a local authority under an agreement, lease or other grant, although having regard to the provisions of such agreement, lease or grant the building so erected may belong or continue to belong to the Government or the local authority, as the case may be; and

(b) notwithstanding anything contained in Section 15, such person shall be entitled to create a tenancy in respect of such building or a part thereof.'

The amendment achieved two different things. It enabled the lessee of the particular kind of building described in clause (a) to create sub-tenancies in spite of the ban against sub-tenancies contained in Section 15. It also excluded from the operation of sub-section (1) the buildings specified in clause (a) of that sub-section. The amendment said nothing about the relationship of the Government or the local authority, on the one hand, and the lessee, on the other, in respect of the land. The word "premises" in sub-section (1) could mean the land or the buildings or both. Sub-section (4)(a) dealt only with the buildings, and did not deal with the land, because it used the word "buildings" and not the more general word "premises". The import of sub-section (4)(a) of Section 4 was thus limited to buildings, and did not extend to land. The sub-section, however, was drafted somewhat inartistically, and the obscurity of the language presents some difficulty. The trial Judge followed a decision of the Bombay High Court reported in *Ram Bhagwandas v. Bombay Corporation*. In that case, one Khudabaksh Irani had taken lease of certain plots some 30 years back, and constructed some structures upon the open plot, and rented them out as tenements. In 1947, Irani sold them to one Tyaballi. In 1951, the Municipal Corporation filed a suit to eject Tyaballi from the plots, and by a consent decree, Tyaballi agreed to deliver up vacant and peaceful possession of the land and the structures. Tyaballi failed to remove the structures, and the Municipal Corporation sought to execute the decree. The tenants thereupon filed a suit under Order 21 Rule 103 of the Civil Procedure Code against the Municipal Corporation, but the suit was dismissed. In the appeal which was filed in the High Court, it was conceded that the Municipal Corporation was the owner of the plots in question, but protection was claimed on the basis of sub-section (4)(a) of Section 4 of the Rent Control Act. Chagla, C.J. in dealing with the history of the amending Act, pointed out that the legislature was seeking to protect by that sub-section tenants who occupied buildings put up on land belonging to a local authority, if the buildings

occupied by them were constructed under an agreement under which the lessee was under an obligation to construct buildings. He pointed out that the protection of sub-section (4)(a) was to buildings and not to land, and that the phrase "under an agreement, lease or other grant" modified not only "held by any person from Government or local authority" but also "erected on any land". He, therefore, held that the words "erected on any land held by any person from a local authority" were descriptive of the building and did not emphasise the point of time when the building was erected. By that phrase, what was emphasised was "that the nature of the building must be such as to satisfy the test that it was erected on land held by a person from a local authority and the test must be applied at the time when the protection is sought".

12. In this case, it is contended, as it was contended in the Bombay High Court, that so long as a building was erected under an agreement with Government or a local authority, the benefit of sub-section (4)(a) of Section 4 would be available, no matter how many hands the property might have changed. This argument was considered by the learned Chief Justice, and was rejected.

13. In our opinion, though the section is far from clear, the meaning given by the learned Chief Justice is the only possible meaning, regard being had to the circumstances in which this sub-section came to be enacted. Those circumstances were: In a case in which the holder of the land from a local authority was seeking to evict his sub-tenants, it was held by the Bombay High Court that the matter was governed by the Rent Control Act. This Court held that sub-section (1) applied and the suit was not governed by the Rent Control Act. The amendment was enacted to cut down by a definition the operation of the words "any premises belonging to the Government or a local authority", by excluding only buildings which were occupied by sub-tenants even though the buildings belonged to the Government or continued to belong to it. Clause (b) of sub-section (4) excluded also Section 15, which prohibited sub-letting by a tenant. That, however, was limited to the case of buildings only, and did not apply to the case of land. In this situation, any action by the Government or the local authority in respect of land falls to be governed by sub-section (1) and not sub-section (4)(a), and sub-section (1) puts the case in relation to land entirely out of the Rent Control Act. The net result, therefore, is that if the Government or a local authority wants to evict a person from the land, the provisions of the Rent Control Act do not come in the way. For the same reason, the suit for ejectment does not have to be filed in the Court of

Small Causes, as required by the Rent Control Act but in the city civil court, as has been done in this case.

(emphasis supplied)”

22. In this context, when the judgements of this Court in the case of **Zunshi Bhanu Yadav Vs. Tukaram Raghoo Chavan** (*supra*) and **Lockwood Industrial and Transport Services, Bombay Vs. Victoria Timber Supplying Company, Bombay** (*supra*) are perused, it becomes clear that the contentions raised on behalf of the petitioners cannot be accepted. In fact, in both these judgements, reference is made to dual test and this has been highlighted on behalf of the petitioners. But, after referring to such dual test, in the case of **Zunshi Bhanu Yadav Vs. Tukaram Raghoo Chavan** (*supra*), this Court has specifically held as follows:-

“... To such a building where such qualification is attracted then even though the building is to belong to the Government or local authority that would not come in the way of the application of the Rent Act to such buildings. Therefore, to tenants and sub-tenants in such buildings, the Rent Act will apply....”

(emphasis supplied)”

23. It is relevant to note that the individuals, who sought protection of the Rent Control Legislations in the aforesaid judgements of the Supreme Court and this Court, were all sub-lessees / tenants / sub-tenants of buildings constructed on the premises.

24. Viewed from this angle, it becomes clear that the whole edifice of the contentions raised on behalf of the petitioners on the basis of the aforementioned judgements, claiming protection of the Rent Control Legislations, completely collapses and the aforesaid contentions have to be rejected. As a consequence, it becomes clear that insofar as the respondent No.1 on the one hand and the predecessor of the petitioners and consequently, the petitioners on the other hand are concerned, the exception carved out under Section 4(4)(a) does not apply, particularly

because such an exception applies to the building, thereby inuring only to the benefit of the sub-lessees, tenants or sub-tenants. Therefore, Section 4(1) of the Bombay Rent Control Act applies in full force.

25. Once this conclusion is reached, the petitioners can certainly not take benefit of the law laid down by the Supreme Court in the case of **Suhas H. Pophale Vs. Oriental Insurance Company Limited** (*supra*) because the said position of law applies only if the persons sought to be evicted had protection of the Rent Control Legislations prior to the operation of the Public Premises Act. There is no serious dispute about the position of law that, even if the judgement in the case of **Suhas H. Pophale Vs. Oriental Insurance Company Limited** (*supra*) has been referred to a Larger Bench, so long as its ratio has not been disturbed, it would continue to bind this Court. In this context, the emphasis placed on behalf of the respondent No.1 on the contents of the eviction petition and the prayer clause is fully justified. A perusal of the same shows that the respondent No.1 is simply seeking eviction of the petitioners, who are successors of the original lessee from the land / plot in question. The petitioners cannot be allowed to take advantage of the position of law and protection available to the sub-lessees, tenants or sub-tenants or occupiers of the building to question the jurisdiction of respondent No.17 - Estate Officer.

26. Having held in favour of the respondent No.1 and against the petitioners in this manner, this Court is of the opinion that it is not necessary to go into the question of definition of 'premises' under the Maharashtra Rent Control Act and the rival submissions made in that regard. In this backdrop, when the impugned order passed by the respondent No.17 - Estate Officer is perused, it is found that although the order is brief and it refers to only one judgement of this Court, the reasoning applied by the said respondent and the findings rendered in the

impugned order cannot be said to be erroneous. The said order does not deserve any interference. The emphasis placed by the learned senior counsel appearing for the petitioners on other prayer clauses in the eviction petition filed before the respondent No.17 - Estate Officer, need not detain this Court from deciding the present writ petition or even to consider the said aspect of the matter as it would be for the respondent No.17 - Estate Officer to pass appropriate orders in terms of the jurisdiction vested with the said authority.

27. In view of the above, the writ petition is dismissed. Since the proceedings before the respondent No.17 - Estate Officer are pending from the year 2013, the said proceedings are expedited.

(MANISH PITALE, J.)

Minal Parab