



VRJ/Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO.616 OF 2009.

New India Insurance Company Ltd.

A Govt. Company, having its
Head Office at the New India bldg,
87 M.G. Road, Fort, Mumbai 400 001

... Applicant

V/s.

1. M/S. KLM Engineering Company Ltd.

occupying Flat No.A/3,
1st floor, Mayfair Gardens,
Little Gibbs Road, Malabar Hill,
Mumbai 400 006

2. The Estate Officer

New India Assurance Company Ltd.
87, M.G. Road, Fort, Mumbai 400 001.

... Respondents

Mr. V. Y. Sanglikar for the Applicant.

Mr. Prasad Dani, Senior Advocate with Mr. Ashwin
Bhadang, Mr. Vishesh Malviya, Mr. Raghav
Dharmadhikari and Ms. Kinjal Shah i/by Rashmikan &
Partners for respondent No.1.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 15, 2024

PRONOUNCED ON : MAY 10, 2024

JUDGMENT.:

1. This revision application under section 115 of the Code of Civil Procedure, 1908 is directed against the judgment and order dated 6 August 2009 passed by the City Civil Judge, Greater Bombay in Miscellaneous Application No.158 of 2008 by which judgment and order passed by the Estate Officer in Case Nos.003 and 003A of 2003 dated 18 July 2008 was set aside.
2. The facts set out in the civil revision application revealed that the applicant is a government company wholly owned by the Central Government. Therefore, premises which belongs to the applicant is public premises within the meaning of section 2(e) of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereafter, "Public Premises Act", for short). The applicant owns a building (residential complex) at Malabar Hill known as Mayfair Gardens.
3. Respondent No.1 is allegedly a sick company. Flat No.A/3 on the 1st Floor of Mayfair Gardens, Malabar Hill, measuring 3252 sq.ft., was given to respondent No.1 on a leave and license basis. The last leave and license agreement was executed with respondent No.1 on 3 March 1995, 5 years from 1 October 1994. The said leave and license agreement expired by efflux of time on 30 September 1999. In December 1999, the applicant communicated to respondent No.1 about the expiry of the license period and demanded possession of premises *inter alia* on the grounds of the expiry of authority and the applicant's requirement. The applicant issued the last termination notice to respondent

No.1 on 18 February 2002 before issuing earlier notices dated 13 December 1999, 9 February 2001, and 2 November 2001. It is necessary to note that the applicant filed the proceedings treating respondent No.1 as a tenant of the premises whose possession became unauthorised due to termination of tenancy and the requirement of own use in the notice.

4. The applicant filed proceedings before respondent No.2 on 16 January 2003 for the eviction of respondent No.1 and for damages under section 8 of the Public Premises Act. Respondent No.2 issued notice under Sections 4 and 7 of the Public Premises Act to respondent No.1 on 21 February 2003.

5. Respondent No.1 filed its written statement. In its reply, he admitted that it occupied the disputed premises as a tenant. It is stated that the Estate Officer had no material in his possession to treat respondent No.1 as an unauthorised occupant. The applicant has waived its right to recover possession by accepting rent from the respondent. It is submitted that in the absence of respondent No.1's capacity as an unauthorised occupant, no damages can be awarded in favour of the applicant.

6. The Estate Officer, after following the procedure and giving the applicant and respondent No.1 an opportunity to be heard, ordered the eviction of respondent No.1, holding him to be an unauthorised occupant as defined under section 2(g) of the Public Premises Act, and awarded damages for unauthorised occupation of the premises vide a judgment dated 18 July 2008.

7. Feeling aggrieved by the order of the Estate Officer,

respondent No.1 filed Miscellaneous Appeal No.158 of 2008 before the City Civil Court at Bombay. The City Civil Judge, Greater Bombay, by the impugned judgment, set aside the order of the Estate officer and rejected the applicant's proceedings for eviction against respondent No.1. The applicant has, therefore, assailed the judgment of the City Civil Judge by way of present civil revision application. Respondent No.1 has challenged the findings recorded against him by filing an affidavit-in-reply.

8. I have heard learned Advocates for the parties for quite some time, perused the impugned order and the other material placed before me. At the outset, Mr. Sanglikar learned Advocate for the applicant, submitted that the Appellate Court travelled beyond the scope of inquiry as the Estate Officer had issued a notice under section 4(1) of the Public Premises Act after due application of mind. The applicant had produced sufficient material in the form of application and its annexures, which contained earlier notices issued by the applicant to respondent No.1. Based on the entire material, the Estate Officer rightly recorded prima facie satisfaction about respondent No.1's possession being unauthorised and need of respondent No.1's eviction. Once the applicant issued such notice, the applicant need not show anything more, and it is for respondent No.1 to establish that the applicant has failed to fulfil ingredients of sections 4 and 5 of the Public Premises Act. He submitted that KLM Engineering Company Ltd. was the tenant. Mr. Sule was earlier director of Mahindra and Mahindra Ltd. in 1967. KLM Engineering Company Ltd. was incorporated in 1979. The provisions of the Public Premises Act were made applicable to the

applicant in 1980. Respondent No.1 became a tenant only after provisions of the Public Premises Act were made applicable to the applicant. Therefore, applicant's right would be governed; therefore, respondent No.1 is not entitled to the protection of tenancy.

9. Per contra, Mr. Dani learned Senior Advocate submitted that based on the interpretation of sections 4 and 5 made in the case of **Minoo Framroze Balsara vs. The Union of India and Others** reported in AIR 1992 Bom. 375 and judgment in the case of **Dwarkadas Marfatia and Sons vs. Board of Trustees of the Port of Bombay** reported in (1989) 3 SCC 293, the prima facie satisfaction arrived at by the Estate Officer is based on no material. The adverse findings recorded against respondent No.1 have been challenged by filing a reply in this proceeding. Since respondent No.1 has been in possession of the premises in question since 1967, he is protected by judgment in the case of **Suhas H. Pophale vs. Oriental Insurance Co., Ltd**, reported in (2014) 4 SCC 657. He submitted that there is a substantial title dispute between the applicant and Respondent No.1; therefore, the applicant's remedy was to file a civil suit. He submitted that the applicant's witness in cross-examination has admitted that the applicant had recovered possession of eight flats in the same building after 2001 till 2003, i.e. the date of initiation of proceedings. During the said period, it is admitted that one flat was given on leave and license to SEBI. It is also admitted that vacant flats are in possession of the applicant. He submitted that by amending the application, it was introduced that respondent No.1 became an unauthorised occupant on 30

September 1999; however, the authorities below recorded contradictory findings regarding the date of respondent No.1 becoming an unauthorised occupant. By amendment, the date of issuance of termination notice was initially pleaded as 9 February 2001, which is replaced by 13 December 1999. There is no explanation regarding the use of vacant flats in possession of applicant. He submitted that the documents on record indicate that the applicant was in possession of the premises as a tenant since 1967.

10. The submissions advanced by the learned advocate for the parties were centered around the following points:

(i) Whether the issuance of notice by the Estate Officer under section 4(1) satisfies the requirement laid down in the case of **Minoo Framroze Balsara** (supra);

(ii) Whether the need for eviction satisfies parameters in **Dwarkadas Marfatia and Sons** (supra).

11. For proper appreciation of the points involved, it is necessary to set out relevant provisions of the Public Premises Act 1971, which are as follows:-

“2. Definitions.— In this Act, unless the context otherwise requires,—

(1)

(2)(g) “unauthorised occupation”, in relation to any public premises, means the occupation by any person of the public premises without authority for such occupation, and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any

other mode of transfer) under which he was allowed to occupy the premises, has expired or has been determined for any reason whatsoever.

4. Issue of notice to show cause against order of eviction.

—(1) If the estate officer has information that any person is in unauthorised occupation of any public premises and that he should be evicted, the estate officer shall issue in the manner hereinafter provided a notice in writing within seven working days from the date of receipt of the information regarding the unauthorised occupation calling upon the person concerned to show cause why an order of eviction should not be made.

5. Eviction of unauthorised occupants.—(1) If, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence produced by him in support of the same and after personal hearing, if any, given under sub-clause (ii) of clause (b) of sub-section (2) of section 4, the estate officer is satisfied that the public premises are in unauthorised occupation, the estate officer shall make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order but not later than fifteen days from the date of the order, by all persons who may be in occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door or some other conspicuous part of the public premises:

Provided that every order under this sub-section shall be made by the estate officer as expeditiously as possible and all endeavour shall be made by him to issue the order within fifteen days of the date specified in the notice under sub-section (1) or sub-section (1-A), as the case may be, of section 4.

.....

12. Section 4 provides that where the Estate Officer is satisfied that the person is in unauthorised occupation of any Public premises, he may serve a show cause notice to the occupant as to why the order of eviction should not be made. What is contemplated is an action by the Estate Officer after he is satisfied that the person is in unauthorised occupation of premises and there is a need for his eviction. The Estate Officer must be satisfied on a preliminary standpoint before issuing a notice pursuant to section 4(1). Here, "opinion" denotes an estimation rather than a conclusive determination. When forming an opinion, the Estate Officer must rely on his own rationale and grounds, which may vary in quality. However, a definitive conclusion cannot be reached without hearing the affected party. At this juncture, no counter-allegations are presented. When the matter is before the Estate Officer to consider issuance notice under section 4, it has only to look at the materials for a prima facie satisfaction as to whether there are materials on record justifying the issuance of notice for the unauthorised occupation of the addressee and the need for his eviction. It is outside the province of the Estate Officer to discuss the materials regarding the pros and cons for itself and to give determinative findings as to whether an eviction case has been made out or not. The notice must specify grounds for eviction, allowing the addressee to contest and request a personal hearing supported by evidence. The phrase 'to specify the grounds' holds significant importance as to the facts and circumstances upon which the Estate Officer forms the opinion that a person is an

unauthorised occupant. These grounds should be clearly articulated in the notice, accompanied by a specific statement indicating that the authority provisionally believes that the person is in unauthorised occupation based on certain acts, orders, reports, or their substance from relevant documents.

13. The provisions of sections 4 and 5 indicate that the Estate Officer is to be satisfied in two stages: the first stage is before he issues a show cause notice, and the second is before he makes his final order of eviction. The first satisfaction is a mere prima facie satisfaction, arrived at ex parte on such material as is then placed before him. The only purpose or object for providing such satisfaction is to prevent him from issuing a show cause notice loosely or out of impulse. The final satisfaction, however, is to be reached after duly considering all the material placed before him as a result of his inquiry after notice to the occupier of the corporation premises concerned. From the meaningful reading of sections 4 and 5, there is an objective satisfaction which is initially tentatively recorded by the Estate Officer on the basis of the materials placed before him for evicting an unauthorised Occupant occupying the Public Premises. The statute, however, requires that this tentative objective satisfaction shall be taken only after scrutiny is held for the purpose of finding out that such satisfaction of the Estate Officer is arrived based on materials such as application along with its annexures. If, therefore, the Estate Officer is making a decision under section 4 of initiating proceedings under the said section, tentative objective satisfaction is involved in this process. Ultimate purpose of behind issuance of

show cause notice is that the addressee cannot effectively show cause unless he knows why the Estate Officer is of the opinion that he is in unauthorised occupation and why his eviction is proposed.

14. The question of *prima facie* satisfaction by the Estate Officer while issuing notice under section 4 of the Act has been explained by the Division Bench of this court in **Minoo Framroze Balsara** (*supra*) as under:

“34.Section 4 prescribes that the unauthorised occupant must be issued with a notice in writing to show cause why an order of eviction should not be passed against him. That notice has to be issued by the Estate Officer provided he is of the opinion that the addressee of the notice is in unauthorised occupation of public premises and that he should be evicted. Prima facie satisfaction of the Estate Officer is a sine qua non of the issuance of the show cause notice. The *prima facie* satisfaction must be two-fold: firstly, that the addressee is in unauthorised occupation of public premises, and, secondly, that he should be evicted. The notice must set out the grounds on which the order of eviction is proposed to be made. It must, therefore, state not only why the addressee is thought to be in authorised occupation but also why it is thought that he should be evicted. It must inform the addressee that he is entitled to show cause against the proposed order of eviction. The addressee cannot effectively show cause unless he knows why the Estate Officer is of the opinion that he is in unauthorised occupation.

15. Applying the parameters discussed above, it is necessary to look at the materials for consideration of the validity of *prima facie* satisfaction arrived at by the Estate Officer while issuing notice

under Section 4(1) of the Public Premises Act. The materials available on record on the date of issuance of notice under Section 4(1) of the Public Premises Act was in the form of an Application under Section 5 of the Public Premises Act filed by the applicant along with the notice dated 13 December 1999, notices dated 9 February 2001, 2 November 2001 and 18 February 2002. The notice dated 13 December 1999 addressed respondent No.1 as the licensee whose period of the license expired efflux of time on 18 September 1999. It, therefore, calls upon the Respondent to vacate the flat in question at the end of the month of tenancy next after the said date. However, the notice dated 9 February 2001 addresses Respondent as a monthly tenant paying Rs.5,469/- per month as rent. Without giving reasons for termination of monthly tenancy, calls upon Respondent to deliver possession after the expiry of the said month. The notice dated 2 November 2001 addresses the respondent as a monthly tenant. It gives the reasons for the termination of tenancy. However, it specifically mentions that, though by notice dated 9 February 2001, the applicant had already terminated respondent's tenancy, due to oversight and inadvertence grounds of eviction remained to be mentioned in the said notice and, therefore, the applicant was issuing fresh notice to terminate respondent's tenancy and calls upon him to deliver peaceful possession at the end of the said month. On 18 February 2002, the applicant addressed the Respondent as a monthly tenant and stated that by notice dated 9 February 2001, the respondent's tenancy was terminated; however, due to oversight and inadvertence, grounds for eviction remained to be mentioned in

the said notice. The applicant, therefore, states that the said notice of 18 February 2002 is a fresh notice to terminate respondent's tenancy and calls upon him to deliver peaceful possession at the end of the said month.

16. To consider the effect of the issuance of fresh notices dated 2 November 2001 and 18 February 2002, it is necessary to refer to Sections 111 and 113 of the Transfer of Property Act, which are as follows:

“111. Determination of lease — A lease of immovable property determines—

(a)

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other

113. Waiver of notice to quit— A notice given under Section 111, clause (h), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Illustrations

(a) *A*, the lessor, gives *B*, the lessee, notice to quit the property leased. The notice expires. *B* tenders, and *A* accepts, rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) *A*, the lessor, gives *B*, the lessee, notice to quit the property leased. The notice expires, and *B* remains in possession. *A* gives to *B* as lessee a second notice to quit. The first notice is waived.”

17. Conjoint reading of Sections 111 and 113 makes it clear that

a notice given under Section 111 clause (h) is deemed to be waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting. Illustration (b) contemplates issuance notice by the lessor, to the lessee, notice to quit the property leased and on its expiry lessee remains in possession and thereupon lessee gives a second notice to quit, the first notice is waived.

18. Considering the language of Section 113 of the Transfer of Property Act, it is abundantly clear that applicant had, in the subsequent notices dated 2 November 2001 and 18 February 2002, treated Respondent's tenancy as subsisting. It is, therefore, evident that as soon as subsequent notices were given, the earlier notices stood waived. In the facts of the present case, it is abundantly clear that the applicant, in the notice dated 2 November 2001, called upon Respondent as a subsisting monthly tenant, paying monthly rent. The applicant accepts that in the earlier notice dated 9 February 2001, he failed to mention grounds of eviction due to oversight and inadvertence and, therefore, the applicant had given fresh notice to respondent to terminate respondent's tenancy and called upon him to vacate the premises after the expiry of current month. Again, in the notice dated 18 February 2002, the applicant treated respondent as a subsisting monthly tenant paying monthly rent and stated that in an earlier notice dated 9 February 2001, he failed to mention grounds of eviction due to oversight and inadvertence and, therefore, treated notice dated 18 February 2002 as a fresh notice calling upon respondent to deliver

possession after the expiry of the current month of tenancy. Therefore, it appears that the last notice dated 18 February 2002, terminating Respondent's tenancy, needed to be treated as a notice of termination of tenancy, which rendered Respondent an unauthorised occupant. In the present case, there can be no doubt that the serving of the subsequent notices and what was stated therein, together with the claim as laid and amplified in the initial eviction application, showed that the applicant waived the first notice by showing an intention to treat the respondent's tenancy as subsisting and that it was with the express or implied consent of the tenant to whom the first notice had been given because the tenant had made payment of the rent which had been demanded. However, it was after the expiration of the period of one month given in the notice. However, despite the availability of notice dated 13 December 1999, notices dated 9 February 2001, 2 November 2001 and 18 February 2002, the Estate Officer forms *a prima facie* opinion regarding the unauthorised occupation of respondent based on notice dated 9 February 2001, which was waived by after notice in the clear language. As held in the case of **Minoo Framroze Balsara** (supra), the *prima facie* satisfaction regarding the addressee in unauthorised occupation on public premises, and he should be evicted, is *sine qua non*. Therefore, the formation of satisfaction of respondent in unauthorised occupation based on waived notice dated 9 February 2001 indicates non-application of mind on the part of the Estate Officer. Such satisfaction is, therefore, contrary to the judgment of the Division Bench of this Court in the case of **Minoo Framroze Balsara** (supra).

19. Moreover, applicant amended the composite application under sections 5 and 7 to substitute the notice dated 13 December 1999 as notice of the termination of tenancy and inserted the date of 30 September 1999 as the expiry of the license. It is pertinent to note that the notice dated 13 December 1999 treated respondent No.1 as a licensee whose period of leave and license had expired due to efflux of time on 18 September 1999. It also indicates that the *prima facie* satisfaction recorded by the Estate Officer while issuing notice under Section 4, treating respondent as a tenant, was inconsistent with the amended composite application of eviction based on termination of license by the notice dated 13 December 1999 treating respondent as a licensee. The applicant's witness replied to question No.23 in his cross-examination in the affirmative, suggestion of respondent that he relied on notice dated 13 December 1999 for eviction and mesne profit. Therefore, the finding recorded by the Appellate Authority that the Estate Officer did not apply his mind but mechanically issued a show-cause notice is borne out of material on record; hence, it does not require interference.

20. When an eviction application is submitted regarding an unauthorised occupant, the Estate Officer must assess the situation to ascertain whether the person is indeed occupying public premises without authorisation and whether eviction is warranted.

21. Upon issuance of a notice as per Section 4 of the Act, the recipient has the opportunity to present their case. The enquiry conducted under Section 5 serves as an opportunity for the occupant to challenge the initial *prima facie* opinion formed by the

Estate Officer before issuing the notice under section 4(1), asserting that they are not an unauthorised occupant. If, in response to the show cause notice, the occupant raises any defence regarding the property's nature (whether it qualifies as public premises or not) or the nature of occupancy (whether they hold a tenancy or not, etc.), the Estate Officer must adjudicate on the legality of such claims. This involves gathering evidence from both parties, if necessary, and evaluating the materials presented by each party. Section 5 of the Act explicitly indicates that once a notice under Section 4 is issued by the Estate Officer based on his formed opinion, it is the responsibility of the notice not only to present a defence but also to provide evidence and make oral submissions in support of their case. It is, therefore, mandatory for a public body to set out the grounds of eviction and details of its need in the application, which would enable the noticee to present a defence. The Estate Officer must thoroughly consider the addressee's defence before potentially issuing an eviction order, recording reasons for the decision.

22. Section 5 stipulates that an eviction order should only be issued after careful consideration of the recipient's response and any supporting evidence they provide. It also grants them a personal hearing if applicable under Clause (ii) of sub-section (2) of Section 4 of the Act. As the Estate Officer possesses quasi-judicial authority, adherence to the principles of natural justice is imperative. It is incumbent upon the Estate officer to afford the occupant an opportunity to be heard and ascertain whether the occupant's presence on the premises is lawful.

23. The requisites outlined in the section 5 are as follows:

- i) To review any objections raised by the occupant in response to section 4;
- ii) To consider any evidence presented by the occupant;
- iii) To provide the occupant or notice recipient with a fair opportunity to present their case;
- iv) If the Estate Officer determines that the occupant is indeed in unauthorised occupation, to issue a reasoned eviction order;
- v) If any occupant declines or neglects to adhere to the eviction order within 30 days of its publication, enforce eviction if necessary, using force if required.

24. Although Section 5 does not explicitly differentiate between various types of occupations, such occupants of public premises may fall into broadly following categories: (i) trespassers, (ii) tenants in breach of lease conditions, or (iii) individuals occupying premises as part of a service contract, yet persisting in occupancy despite the termination of their contract. However, there exists another category of tenants who may require eviction not based on previously mentioned grounds but rather on factors necessitating proof of the landlord's fairness and reasonableness, which may include the landlord's own need for the premises. In the latter scenario, the landlord must not only demonstrate their genuine need but also quantify any damages they may be entitled to if the

order favours them.

25. Except in the first three categories of cases, as previously discussed, Sections 4 and 5 of the Act may need to be interpreted differently in light of judicial decisions. If the landlord, as a State entity under Article 12 of the Constitution of India, is required to demonstrate fairness and reasonableness in initiating proceedings, it is incumbent upon them to justify how their request aligns with the constitutional principles of Article 14. Proper interpretation of the Act requires consideration not only of the fundamental principles of natural justice but also of the constitutional principles at stake. It is also necessary that purposive construction approach should be employed, ensuring that the Act's objectives are fulfilled, thus prompting the beneficiary under the statutory scheme to fulfil its constitutional obligations. To achieve this objective, it is imperative to analyse Sections 4 and 5 of the Act in conjunction. While typically, a tenant occupying government-owned property may find themselves in a less favourable position compared to a tenant protected under Rent Control Act, it is essential to consider the judicial precedents defining the principles of "bona fide action" and "fair conduct" on the part of the landlord, as established in **Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay** reported in (1989) 3 SCC 293 and **Ashoka Marketing Ltd. v. Punjab National Bank** reported in (1990) 4 SCC 406.

26. In **Dwarkadas Marfatia and Sons** (supra), the Apex Court emphasised that the public authorities, while benefiting from exemptions under the Rent Act, must act in the public interest. Hence, such actions are subject to scrutiny and adjudication.

27. In the case of **Ashoka Marketing Ltd.** (supra), concerns were raised regarding corporations, like nationalised Banks and the Life Insurance Corporation, exploiting their property ownership status under the Public Premises Act for profit gains. However, the Supreme Court emphasised that all actions by public authorities must be reasonable and serve the public interest, especially considering their exemption from Rent Control Act provisions. Therefore, when terminating an occupant's authority or seeking eviction, the Government company or corporation must act in the public interest. This standard applies to both the initial termination decision and subsequent eviction proceedings, including any appeals. It was observed that many corporations mentioned in Section 2(e)(2)(ii) of the Public Premises Act, such as nationalised banks and the Life Insurance Corporation, are commercial entities mandated to pursue profits. However, this cannot justify their acquisition of tenant-occupied properties at low prices, followed by eviction and subsequent sale at higher values. The Court highlighted that all actions of public authorities, especially when enjoying immunity from Rent Act regulations, must be guided by reason and public interest. The discretion or power exercised by such authorities in dealing with tenants, who were treated differently from other landlords with the assumption that they would not act as private landlords, must be evaluated based on this standard. It was further observed that granting primacy to the Public Premises Act would exempt properties owned by companies and statutory bodies specified in Clauses (2) and (3) of Section 2(e) from Rent Control Act provisions. Consequently, the actions of

such companies and statutory bodies in managing their properties under the Public Premises Act must adhere to the same standard."

28. At this stage, it may be noticed that in a challenge arising out of an issue on the point of leading of evidence, present case travelled up to the Supreme Court and the Supreme Court in the case of **New India Assurance Company Ltd. vs. Nusli Neville Wadia and Another** reported in (2008) 3 SCC 279, observed as under:

“27. The occupants of public premises may be trespassers, or might have breached the conditions of tenancy, or have been occupying the premises as a condition of service, but were continuing to occupy the premises despite cessation of contract of service.

28. However, there may be another class of tenants who are required to be evicted not on any of the grounds mentioned hereinbefore but *inter alia* on the ground, which requires proof of the fairness and reasonableness on the part of the landlord which may include requirement for its own use and occupation.

29. Furthermore, a proceeding may be initiated under Section 4 simpliciter. A composite proceedings may also be initiated both under Sections 4 and 7 of the Act. In the latter category of cases the landlord would be required to establish not only the bona fide need on its part but also quantum of damages to which it may held to be entitled to, in the event that an order is passed in favour of the establishment.”

29. In the facts of the present case, the respondent being a tenant, the applicant needs to demonstrate fairness and reasonableness along with the bona fide need to justify how the applicant's request complies with the constitutional principles

specified in Article 14 of the Constitution of India. According to the applicant, the premises in question are required to accommodate every increasing staff of the applicant as the applicant's protection under the Maharashtra Rent Control Act, 1999 has been extinguished, and possession decrees are passed against the applicant. The additional affidavit applicant witness Khaire states that in 2001, there was a severe shortage of accommodation for its officers. There was a waiting list of 14 officers for accommodation in the year 2001. The applicant's witness, in his cross-examination, had admitted that the applicant had recovered possession of eight flats since 2001 in the same building. The applicant has not tendered any explanation in his evidence as to how eight vacant flats were utilised by it after 2001 till the filing of the proceedings under the Public Premises Act, i.e. in 2003. Moreover, the evidence on record indicates that, by an agreement dated 25 September 2002, the respondent leased out flat No.C-33 in the same building to SEBI on a monthly rent of Rs.2.20 lakh and flat No.39-C was leased out on 10 October 2002 to India Card Holding Co. Ltd. on a monthly rent of Rs.1,16,000/- and interest-free deposited of around Rs.2.60 crores. Therefore, the applicant failed to demonstrate fairness and reasonableness along with bona fide need in compliance with the constitutional principles specified in Article 14 of the Constitution of India

30. The last submission on behalf of the Respondent relying on the judgment of **Suhas H. Pophale** (supra) is that the Respondent was inducted as a tenant before the premises became public premises in the year 1980. Therefore, according to him, the

protection granted to the tenant for public premises before 1958, as per the judgment in the case of **Suhas H. Pophale** (supra), needs to be substituted as the year of 1918 in place of 1958. *Per contra*, the learned Advocate for the applicant pointed out that the Respondent has not placed any evidence on record to show that the Respondent company was a tenant in the suit premises. He submitted that Sule initially was the director of the Mahindra & Mahindra company and was in possession of suit premises. The respondent company was incorporated in the year 1979. The agreement on record indicates that the Respondent's tenancy started in the year 1985. Therefore, the applicant is not entitled to protection as per the judgment of **Suhas H. Pophale** (supra).

31. The applicant is right in contending that the Respondent has failed to produce any evidence on record that the Respondent company was a tenant in the suit premises before 1985. Moreover, the Respondent admitted in her cross-examination that the Respondent's company was incorporated in 1979. The nationalisation of applicant took place on 1 January 1974. Therefore, in the absence of proof indicating the existence of the Respondent's tenancy before 1980, the Respondent is not entitled to get protection as per the judgment in the case of **Suhas H. Pophale** (supra).

32. For the reasons stated above, the petition has no merit. Therefore, the writ petition is dismissed. There are no costs.

33. At this stage, learned Senior Advocate on behalf of the respondents states that since the order passed by the Estate Officer

directing the opponent to pay the amount under section 7 has been set aside, the applicant is liable to repay the said amount.

34. Since the order of determination of damages under section 7 has been set aside, as a consequence the applicant needs to repay the amount to the respondents, subject to adjustment of the rent paid at the rate before initiation of proceedings under the Act. However, to grant an opportunity to the applicant to challenge the present order, it is directed that in case challenge to the present order before the superior Court fails, the applicant shall repay the opponent damages deposited as per the order of appellate authority within three months from the date if challenge to the order fails.

(AMIT BORKAR, J.)