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

WRIT PETITION NO.3650 OF 1988

Cyril Ribeiro

.. Petitioner

Versus

The State of Maharashtra and Ors.

.. Respondents

Mr. Amogh Singh a/w Mr.Santosh Pathak, Mr.Chirag Thakkar,
Mr.Nimish Lotlikar i/b M/s.Law Origin, *Advocate for the Petitioner*

Mrs.Palsuledesai, A.G.P. for the State

Mr.A.S. Khandeparkar, Sr.Advocate a/w Ms.Sneha Phene, Ms.Shilpa
Joshi, Mr.K.J.Tiwari, *Advocate for the Respondent Nos.3.*

CORAM: G.S.KULKARNI &

FIRDOSH P. POONTIWALLA, JJ.

RESERVED ON: 24th OCTOBER, 2024

PRONOUNCED ON: 23rd APRIL, 2025

Judgement: (Per FIRDOSH P. POONTIWALLA, J.)

1. Rule. Rule made returnable forthwith. Heard finally by consent
of the parties.

2. The present Writ Petition seeks the following final reliefs:

(a) that this Hon'ble Court may be pleased to issue a writ of Mandamus of a Writ in the nature of Mandamus or any other appropriate writ direction or order under Article 226 of the Constitution of India against the Respondent Nos.1 and 2 its officer, subordinates, servants and agents to forebear from continuing flat No. G1 on the ground floor of Beacon Building situate at Plot No.144, TPS Corner of west and South Avenue Santacruz (West) Bombay 400054 under requisition and to release the said flat from requisition and hand over possession of the same to the Petitioner.

(a1) that this Hon'ble court be pleased to exercise jurisdiction under Article 266 of the constitution of India and to issue a Writ of mandamus or writ in the nature of mandamus or any other appropriate writ, order or direction ordering and directing the Respondents, their offices servants and agents to within 3 months or within such time as this Hon'ble court may deem fit to grant to respondent No.3, hand over to the Petitioner quiet vacant and peaceful possession of the Flat No.G-1, Ground floor; "Beacon", at Plot No.144 TPS Corner of west and south, R.K. Mission Marg Avenue, santacruz (west) Mumbai-400054;

3. The Petitioner is the owner of Flat No.G-1 on the Ground Floor of the building known as Beacon situated at Plot No.144, TPS Corner of West & South Avenue, Santacruz (W), Mumbai. (hereinafter referred to as "Flat No.G-1").

4. The Petitioner's father, one Nicholas V.Ribeiro was the owner of the said building Beacon. As Nicholas V.Ribeiro was a front officer serving

outside Bombay, the said property was being looked after and managed by Mrs.M.A.Ribeiro, the mother of Nicholas Ribeiro. Mrs.Ribeiro, being desirous of letting out South flat No.1 on the top floor of the Beacon building to one A.R.Moraes, gave an intimation to the Controller of Accommodation of the State of Bombay (Respondent No.2) as required under Section 6 (1) of the Maharashtra Land Requisition Act, 1948 (*"the Requisition Act"*).

5. By an Order dated 23rd August 1949, the said South flat was requisitioned by the then Government of Bombay in exercise of the powers conferred on it under Section 6 of the Requisition Act.

6. By an Order dated 23rd August 1949, the said flat was allotted to one B.P.Nayak.

7. By an Agreement dated 6th January 1978 entered into between Nicholas Ribeiro, as the Vendor, and one Akhtar Hasan Rizvi, trading in the name of M/s.Rizvi Builders, as the purchaser, Nicholas Ribeiro agreed to permit the said Akhtar Hasan Rizvi to develop the said property for the consideration, and on the terms and conditions, mentioned in the said Agreement. As a part of the consideration, Nicholas Ribeiro was to receive

monetary consideration and four flats in the newly constructed building i.e. two flats on the ground floor and two flats on the first floor.

8. Thereafter, an Agreement dated 2nd March 1979 was entered into between Nicholas Ribeiro and the State of Maharashtra, through Respondent No.2, whereby demolition of the said property was permitted on the terms that the requisitioned flat i.e. South flat No.1 shall be de-requisitioned and demolished and a flat admeasuring 800 sq.ft in the newly constructed building shall be offered to Respondent Nos.1 and 2 for requisition.

9. By an Order dated 2nd August 1979, the said South flat No.1 in Beacon building was de-requisitioned by Respondent Nos.1 and 2 pursuant to the said Agreement dated 2nd March 1979.

10. Thereafter, a Suit was instituted by Nicholas Ribeiro against Rizvi in this Court, being Suit No.302 of 1981. In the said Suit, a consent decree was passed on 9th July 1982. The said consent decree *inter alia* provided that Flat No.G-1 on the ground floor of the newly constructed building would be allotted to Nicholas Ribeiro. Nicholas Ribeiro nominated the Petitioner as a Member in respect of the said flat. By the said consent

decree, it was also recorded that the said flat would be occupied by the Government allottee as per the Agreement dated 6th January 1978.

11. By an Order dated 10th September 1982, Flat No.G-1 was requisitioned by Respondent Nos.1 and 2.

12. By an Order dated 21st September 1982, passed by Respondent No.2, B.M.Ghatwai, the Original Respondent No.3, was allotted Flat No.G-1 for his residence.

13. In 1988, the present Writ Petition was filed.

14. By a letter dated 27th June 1988 addressed to Respondent No.2, the Petitioner called upon him to de-requisition Flat No.G-1 on the ground that the indefinite continuation of requisition of the said flat by Respondent Nos.1 and 2 was arbitrary, without jurisdiction and illegal.

15. Further, by letters dated 29th April 1989 and 16th June 1989, addressed to Respondent No.2, the Petitioner called upon Respondent No.2 to hand over vacant possession of Flat No.G-1 to the Petitioner.

16. On 31st July 1990, Original Respondent No.3 retired from the service of Respondent No.1 and, hence, ceased to be in the employment of Respondent No.1.

17. Respondent No.2 issued a Notice dated 7th October 1995, under Section 8C(2) of the Requisition Act, to Original Respondent No.3 wherein Respondent No.2 stated that, pursuant to the judgement of the Supreme Court of India in *Grahak Sanstha Manch and Others vs. State of Maharashtra*¹, Respondent No.1 proposed to consider whether to continue the requisition of the said premises or to de-requisition the said premises. Therefore, by the said Notice, Original Respondent No.3 was called upon to appear before Respondent No.2 within seven days from the date of receipt of the said Notice with his written statement and documentary evidence, if any, to show cause why the requisition should not be continued further and appropriate steps should not be taken to evict Original Respondent No.3 from Flat No.G-1 under the provisions of the Requisition Act.

18. By a letter dated 3rd November 1995, Original Respondent No.3 gave a reply to the said Notice dated 7th October 1995. The said letter dated

¹ (1994) 4 SCC 192

3rd November 1995 was replied to by Respondent No.2 by a letter dated 7th February 1996.

19. By a letter dated 2nd March 1996, Original Respondent No.3 gave his response to the said letter dated 7th February 1996.

20. Respondent No.2 passed an Order dated 14th March 1996. In the said Order, Respondent No.2 stated that, since Flat No.G-1 was under requisition for about 13 years, it was necessary to release the same from the requisition at the earliest. He further stated that he was satisfied that Flat No.G-1 need not be continued further under requisition and passed an Order, in exercise of powers conferred upon him by Section 8C(1) of the Requisition Act, directing Original Respondent No.3 to vacate Flat No.G-1 within 30 days from the date of receipt of the said Order and hand over vacant possession thereof to the Government.

21. On 15th April 1996, Original Respondent No.3 filed Appeal No.45 of 1996 against the said Order dated 14th March 1996 before the Appellate Authority i.e. the Secretary of the Government of Maharashtra, General Administration Department, Mantralaya, Mumbai 400 032. We are

informed that the said Appeal is still pending. However, no stay is granted of the said Order dated 14th March 1996.

22. By an Order dated 5th August 1998, the present Writ Petition was dismissed by this Court. The Petitioner filed a Special Leave Petition, being SLP (Civil) No.18365 of 1998, challenging the said Order dated 5th August 1998. By an Order dated 12th February 1999, the Supreme Court granted Special Leave to Appeal under Article 136 of the Constitution of India and, hence, the said SLP was converted into Civil Appeal No.920 of 1999. The said Civil Appeal No.920 of 1999 was tagged with Civil Appeal No.5168 of 1998.

23. By a judgement dated 18th February 2003, the said Civil Appeal No.920 of 1999, Civil Appeal No.5168 of 1998 and other Civil Appeals were disposed of by the Supreme Court. The said judgement dated 18th February 2003 is in the case of *Welfare Association, A.R.P. Maharashtra and Another vs. Ranjit P. Gohil and others*². By the said judgement, the vires of the impugned amending Act to the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as “the Rent Act, 1947”) was upheld. It was also felt that some of the Writ Petitions filed in the High Court raised other issues as well, which, in the event of the impugned judgement

² (2003) 9 SCC 358

being set aside, would have to be remanded to the High Court for hearing on issues other than the issue as to the vires of the impugned amending Act. It was further directed that the said Appeals would be listed for appropriate consequential directions before the Supreme Court.

24. Pursuant to the said direction, an Order dated 29th July 2003 was passed in various Civil Appeals, including Civil Appeal No.920 of 1999 filed by the Petitioner, whereby the Supreme Court remanded the matter to the High Court for being decided consistently with the law laid down by the Supreme Court in the judgement dated 18th February 2003. The said Order also directed that the High Court would be free to form its opinion and decide issues other than those covered by the said judgement of the Supreme Court. It is in these circumstances, that the present Writ Petition has been remanded to this Court for consideration.

25. By a Notice dated 29th August 2006, Respondent No.2 called upon Original Respondent No.3 to show cause as to why the South flat situated on the top floor of the Beacon Building should not be discontinued from requisition and why Respondent No.3 should not be evicted from the said requisitioned flat. It seems that, in the said Notice, Respondent No.2

has, by mistake, referred to the South flat on the top floor of the Beacon Building, instead of Flat No.G-1.

26. Original Respondent No.3 replied to the said show cause notice dated 29th August 2006 by his letter dated 22nd September 2006.

27. Thereafter, by a letter dated 30th April 2008 addressed to Respondent No.2, the Petitioner called upon Respondent No.2 to inform him about the progress in the matter of handing over possession of Flat No.G-1 to him. By an Order dated 9th April 2010, Respondent No.2 once again called upon Original Respondent No.3 to vacate the requisitioned flat within thirty days from the date of receipt of the said Order.

28. By an Order dated 28th November 2023, passed by this Court, the Petitioner was permitted to amend the Petition to bring subsequent facts on record and also to add Respondent Nos.3A and 3B, being the heirs of the deceased Original Respondent No.3, as parties to the Petition.

29. Respondent Nos.1 and 2 have filed an Affidavit in Reply dated 24th August 2012 to the Petition in which they have contended that Original Respondent No.3, who had retired from government service before 7th

December 1996 and who had been served an eviction Order before 11th June 1996, is not deemed to be a protected tenant of the landlord. Further, Respondent Nos.1 and 2 have filed a further Affidavit in Reply dated 26th September 2024 reiterating the aforesaid contention that the Original Respondent No.3 was not a protected tenant.

30. Respondent No.3A has filed Affidavits in Reply dated 25th June 2024 and 4th October 2024 opposing the grant of any reliefs in the Petition. The Petitioner has also filed an Affidavit in Rejoinder dated 4th September 2024.

31. We have heard the learned counsel for the parties and perused the documents on record.

32. Mr.Amogh Singh, the learned counsel appearing on behalf of the Petitioner, submitted that the law with respect to requisition of property is no longer *res integra*. He submitted that the Supreme Court in ***H.D.Vora vs. State of Maharashtra and Others***³ has held that requisition cannot be continued for an indefinite period of time. He submitted that this view has

3 (1984) 2 SCC 337

been upheld by the Constitution bench of the Supreme Court in ***Grahak Sanstha Manch and Others*** (supra).

33. Mr.Singh submitted that, in the present case, there is no dispute that an eviction order was passed by a competent authority on 14th March 1996 under Section 8(C)(1) of the Requisition Act. He further submitted that Respondent No.1 promulgated the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, The Bombay Land Requisition Act, 1948 and the Bombay Government Premises (Eviction) (Amendment) Ordinance, 1996, whereby Section 5(1-A) of the Rent Act, 1947 was amended *inter alia* so as to confer status of ‘tenant of the landlord’ on such persons who were allotted the requisitioned premises by the State Government for residential purpose and where such premises were continued under requisition. He submitted that the said amendment clearly prescribes that only such persons against whom there is no eviction order prior to 11th June 1996 were deemed to have become tenants. He further submitted that, since, admittedly, an eviction order was passed against Original Respondent No.3 on 14th March 1996, the benefits of being a deemed tenant cannot be claimed by Original Respondent No.3. Mr.Singh further submitted that, without prejudice to the aforesaid, even otherwise, Original Respondent No.3 had retired on 31st July 1990, and, therefore, would not fall under the definition of the ‘*Government allottee*’

under the provisions of the Amended Act. In this context, Mr.Singh referred to the judgement of the Supreme Court in *Maheshchandra Trikamji Gajjar vs. State of Maharashtra and Others*⁴ and the judgement of this Court in *The Sahyadri Central Consumer Co-op. Wholesale and Retail Stores Ltd. vs. The Controller of Accommodation, General Admn. Department and Others*.⁵

34. Mr.Singh further submitted that the Rent Act, 1947 was repealed and the Government of Maharashtra notified Maharashtra Rent Control Act, 1999 (“Rent Act, 1999”). He submitted that Section 7 and Section 27 of the Rent Act, 1999 reiterate that those persons against whom there is no eviction Order prior to 11th June 1996, were deemed to have become tenants. He submitted that therefore Original Respondent No.3 cannot seek benefits of the amendment as there is already an eviction order passed against Original Respondent No.3 before 11th June 1996 i.e. on 14th March 1996.

35. Ms.Palsuledesai, the learned A.G.P. appearing on behalf of Respondent Nos.1 and 2, relied on the Affidavits dated 24th August 2012 and 26th September 2024 filed on behalf of Respondent Nos.1 and 2, and submitted that Original Respondent No.3, who had retired before 7th December 1996, and who had been served the Eviction Order dated 14th

⁴ (2000) 3 SCC 295

⁵ Writ Petition No.73 of 2015

March 1996, before 11th June 1996, is not deemed to be a protected tenant of the landlord. In order words, Respondent Nos.1 and 2 supported the case of the Petitioner.

36. Mr.Khandeparkar, the learned Senior Advocate appearing on behalf of Respondent No.3A, opposed the granting of any reliefs in the Petition.

37. Mr.Khandeparkar submitted that, by a judgement dated 5th August 1998, this Court dismissed the present Writ Petition. The Petitioner had filed a SLP challenging the said Order dated 5th August 1998. The Petitioner's SLP was tagged with those SLPs which resulted in the judgement in *Welfare Association* (supra). He submitted that by an Order dated 29th July 2003, the Supreme Court directed re-consideration of issues other than vires. The Supreme Court did not consider the issues raised in the Petitioner's SLP at all and did not set aside the judgement dated 5th August 1998. He submitted that, in these circumstances, the Petitioner cannot re-agitate the Petition.

38. Mr.Khandeparkar submitted that Original Respondent No.3 was a Government allottee as per Section 7(2)(b) of the Rent Act, 1999 and

became a deemed tenant as per the provisions of Section 27 thereof as Flat No.G-1 was requisitioned and allotted to him for residential purpose and on 7th December 1996 he was in occupation and possession of Flat No.G-1 for residence.

39. Mr.Khandeparkar submitted that no order had been passed by any Court quashing the order of requisition of Flat No.G-1 or directing Original Respondent No.3 to vacate the same. Mr.Khandeparkar submitted that Section 27 of the Rent Act, 1999 provides for deemed tenancy notwithstanding “*any order of eviction issued by the competent authority*” irrespective of the date when the said order was passed. He submitted that, thus, Original Respondent No.3 became a deemed tenant notwithstanding the Order dated 14th March 1996 of eviction.

40. Further, Mr.Khandeparkar submitted that Original Respondent No.3 had also filed an Appeal against the Order of eviction dated 14th March 1996, after which no further action was taken to evict him. He submitted that, after passing of the eviction Order dated 14th March 1996, Respondent No.2 accepted rent from Original Respondent No.3 and relied upon certain rent receipts in that regard. He further submitted that Respondent No.2 had issued another show cause notice dated 29th August 2006 calling upon

Original Respondent No.3 to vacate the requisitioned premises. Mr.Khandeparkar submitted that all the aforesaid facts clearly showed that the eviction Order dated 14th March 1996 had not attained finality.

41. Mr.Khandeparkar further submitted that the Maharashtra Ordinance dated 7th December 1996 and the Maharashtra Ordinance dated 26th December 1997 show that the Rent Act, 1947 was amended to grant deemed tenancy to persons such as Original Respondent No.3. Mr.Khandeparkar submitted that, while the first Ordinance contained the words “are *allowed by the State Government to remain in occupation or possession*” in Section 5(1A), the second Ordinance amended this to “are *in their occupation or possession*”. Mr.Khandeparkar submitted that the first Ordinance granted tenancy in Section 15-B, notwithstanding any Order of the Court passed after 11th June 1996, but did not refer to any eviction order of a competent authority under the Requisition Act. He submitted that the second Ordinance amended the provision and granted deemed tenancy notwithstanding “*any order of eviction issued by the Competent Authority or by the Appellate Authority, under the Bombay Land Requisition Act 1948.*” Mr.Khandeparkar submitted that, pertinently, these words were deliberately added after the words “*11th June 1996*” thus making it absolutely clear that

tenancy would be granted notwithstanding any order of eviction passed by the Competent Authority or by the Appellate Authority on any date.

42. Mr.Khandeparkar submitted that the legislative intent was to create two categories of orders of eviction/de-requisitioning notwithstanding the passing of which deemed tenancy was to be granted - (i) court orders passed after 11th June 1996 and (ii) orders of Competent or Appellate Authority passed on any date. Mr.Khandeparkar submitted that, if the intent was not to grant tenancy to persons against whom eviction orders had been passed by the Competent or Appellate Authority before 11th June 1996, the words "*any order of eviction issued by the Competent Authority or by the Appellate Authority, under the Bombay Land Requisition Act 1948*" would have been added before the words "*the 11th June 1996*" in Section 15-B. Mr.Khandeparkar submitted that the Statement of Objects and Reasons of the Second Ordinance also makes it clear that the legislative intent was to grant the benefit of deemed tenancy also to those occupants who had been issued eviction orders by the Competent Authority.

43. Mr.Khandeparkar submitted that the Rent Act, 1947, and amendments thereto are welfare legislations, and, therefore, must be construed so as to further its object and intention. In support of this

proposition, he relied upon the judgement of the Supreme Court in *Hindustan Lever Ltd. v. Ashok Vishnu Kate*⁶. Mr.Khandeparkar also submitted that Section 9(8) of the Requisition Act is similar to Section 27 of the Rent Act, 1999 and also grants deemed tenancy.

44. In support of his submissions, Mr.Khandeparkar relied upon the decision of this Court in *Kaiki Rustomji Alpaiwalla v. State of Maharashtra*.⁷

45. Further, Mr.Khandeparkar submitted that the Petitioner's reliance upon the decision of this Court in *The Sahyadri Central Consumer Co-op. Wholesale and Retail Stores Ltd.* (supra) was misplaced, as in the said case, there was already an order passed by the High Court setting aside the requisition order, which order was upheld by Supreme Court in *Grahak Sanstha Manch and Others* (supra) and the Petitioner therein, notwithstanding such orders, had continued to remain in the premises for 25 years. Mr.Khandeparkar submitted that, in the present case, the requisition order was never set aside.

46. Mr.Khandeparkar next submitted that the decision in the case of *Gajjar* (supra) had been relied upon by the Petitioner. He submitted that,

⁶ (1995) 6 SCC 326

⁷ (2006) 1 Mah.L.J.522

subsequent to this case, the Supreme Court, in ***Welfare Association*** (supra) had upheld the constitutional validity of amendments to the Rent Act, 1947. He submitted that a clear construction of the said provisions showed that a person such as Original Respondent No. 3 was granted deemed tenancy. Mr.Khandeparkar further submitted that, in the case of ***Gajjar*** (supra), the order of requisition had been set aside by the High Court, which was accepted by both sides. He submitted that, in the present case, the requisition order was not set aside. Further, he submitted that, in the case of ***Gajjar*** (supra), the wording in the second Ordinance was not considered, inasmuch as the Supreme Court merely interpreted the word "*allowed*", which formed part of the first Ordinance and was in fact deleted from the second ordinance. Mr.Khandeparkar submitted that, in these circumstances, the Writ Petition ought to be dismissed.

FINDINGS AND CONCLUSIONS:

47. The present Writ Petition seeks a writ of mandamus ordering and directing the Respondents to hand over vacant and peaceful possession of Flat No.G-1 to the Petitioner.

48. In order to consider whether the relief sought by the Petitioner can be granted, we will first have to consider the relevant provisions of law in this regard.

49. The historical antecedents on requisition of premises by the Government in the early years of independence would show that the continuance of the requisition of the premises for unreasonably long periods had brought about quite an unrest amongst the landlords. This gave rise to large scale litigation. The litigation reached the Supreme Court culminating in one of its significant judgments on the Requisition Act, in *H.D.Vora* (supra). The decision of the Supreme Court in *H.D.Vora* (supra) was a pathbreaker. This decision recognized the rights of the landlords to receive back their premises which were requisitioned during the early years of independence thereby depriving the landlords of their valuable rights to property. Jurisprudentially the issues did not rest on the decision of the two Judge Bench in *H.D.Vora* (supra). The Constitution Bench of the Supreme Court, on 27th April 1994, decided the issues on the legality of the continued occupation of the requisitioned premises by the allottees, in the case of *Grahak Sanstha Manch and Others* (supra). In this case, the Supreme Court was concerned with two kinds of allottees, namely those who were using the requisitioned premises for commercial purposes and the others for

residential purposes. The Constitution Bench in this decision, while upholding the decision in *H.D.Vora* (supra), held that there cannot be an indefinite requisition of the premises under the Requisition Act. It clarified the decision in *H.D.Vora* (supra), holding that, although the premises can be requisitioned for a permanent public purpose, however, the order of requisition can be continued only for a reasonable period of time. It was held that the continuance of an order of requisition for a period as long as 30 years was unreasonable. The Supreme Court directed that all the allottees of the requisitioned premises shall vacate their respective premises before 30 November 1994 and the possession of the requisitioned premises be handed over by the allottees to the Government and, thereafter, the Government shall hand over possession to the respective landlords before 31 December 1994. The Supreme Court also directed that it would not be an obligation of the State Government to grant any alternate accommodation to any of the allottees of the requisitioned premises. As an aftermath of the decision of the Supreme Court in *Grahak Sanstha Manch and Others* (supra), affecting the allottees, the Governor of Maharashtra promulgated Maharashtra Ordinance No.XXIII of 1996 dated 7th December 1996, to amend the Rent Act, 1947, the Requisition Act and the Bombay Government Premises (Eviction) Act, 1955. By the Ordinance, Section (1-A) was added to Section 5 of the Rent Act, 1947 which reads as under:

“(1A) "Government allottee",

(a) in relation to any premises requisitioned or continued under requisition which are allotted by the State Government for any non-residential purpose to any department or office of the State, Government or Central Government or any public sector undertaking or corporation owned or controlled fully or partly by the State Government or any co-operative society registered under the Maharashtra Co-operative Societies Act, 1960 or any foreign consulate, by whatever name called, and on the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Ordinance, 1996, are allowed by the State Government to remain in their occupation and possession, means the principal officer-in-charge of such office or department or public sector undertaking or corporation or society or consulate; and

(b) in relation to any premises requisitioned or continued under requisition which are allotted by the State Government for residential purpose to any person and on the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Ordinance, 1996, such person or his legal heir is allowed by the State Government to remain in occupation or possession of such premises for his or such legal heir's own residence, means such person or legal heir.”

50. Further, by the said Ordinance No.XXIII of 1996, Section 15B was inserted in the Rent Act, 1947 which reads as under:

“15B. (1) On the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Ordinance, 1996 (hereinafter in this section referred to as "the said date ").-

(a) the State Government, in respect of the premises requisitioned or continued under requisition and allotted to a Government allottee referred to sub-clause (a) of clause (1A) of section 5; and

(b) the Government allottee, in respect of the premises requisitioned or continued under requisition and allotted to him as referred to in sub-clause (b) of clause (1A) of section 5, shall, notwithstanding anything contained in this Act, or in the Bombay Land Requisition Act, 1948, or in any other law for the time being in force, or in any contract, or in any judgement, decree or order of any court passed on or after the 11th June 1996, be deemed to have become, for the purposes of this Act, the tenant of the landlord; and such premises shall be deemed to have been let by the landlord to the State Government or, as the case may be, to such Government allottee, on payment of rent and permitted increases equal to the amount of compensation payable in respect of the premises immediately before the said date.

(2) Save as otherwise provided in this section or any other provisions of this Act, nothing in this section shall affect,-

(a) the rights of the landlord including his right to recover possession of the premises from such tenant on any of the grounds mentioned in section 13 or in any other section;

(b) the right of the landlord or such tenant to apply to the court for the fixation of standard rent and permitted increases under this Act, by reason only of the fact that the amount of the rent and permitted increases, if any, to be paid by such tenant to the landlord is determined under sub-section (1);

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

51. Thereafter, the Government of Maharashtra issued Ordinance No.XX of 1997 to further amend the Rent Act, 1947, the Requisition Act and the Bombay Government Premises (Eviction) Act, 1955. By the said

Ordinance of 1997, Section 5(1A) and Section 15B were amended. These amendments brought about by the Ordinance of 1997 read as under:

“2. Amendment of section 5 of Bom.LVII of 1947- In section 5 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the principal Act”), in clause (1A) -

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

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

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

52. Consequential amendments were also effected in the Requisition Act. Further, subsequently, the Ordinance was replaced by the Bombay Rent, Hotel and Lodging House Rates Control Act, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1997 (Maharashtra Act XIV of 1997).

53. The validity of the said Amendment Act XIV of 1997 was assailed before this Court. This Court upheld the challenge. The matter was carried to the Supreme Court and the Supreme Court delivered its judgement in the case of ***Welfare Association*** (supra) upholding the amendment. The issues which fell for consideration of the Supreme Court in the said decision was as to whether the State Government had the requisite legislative competence to enact the amendments, whether the impugned legislation was a colourable one and was an interference with the judicial mandate of the decisions in ***H.D.Vora*** (supra) and ***Grahak Sanstha Manch and Others*** (supra) or had the effect of overruling of the said decisions of the Supreme Court and hence violative of the doctrine of separation of powers and lastly, whether the impugned enactment was violative of Article 14 of the Constitution, being arbitrary and unreasonable. The Supreme Court in ***Welfare Association*** (supra) opined that the said amending Act was intra vires and within the competence of the State Legislature. The Supreme Court, referring to the decision in ***Grahak Sanstha Manch and Others*** (supra), held that all occupants of the premises, the continued requisition of which has been quashed, shall be bound to vacate and hand over vacant possession to the State Government as directed in the decision of ***Grahak Sanstha Manch and Others*** (supra).

54. The State of Maharashtra thereafter repealed the Rent Act, 1947 by notifying the Rent Act, 1999 with effect from 31st March 2000. Section 7 sub-section 2 of the Rent Act, 1999 defines a Government allottee as under :-

"7(2) "Government allottee",-

(a) in relation to any premises requisitioned or continued under requisition which are allotted by the State Government for any non-residential purpose to any Department or office of the State Government or Central Government or any public sector undertaking or corporation owned or controlled fully or partly by the State Government or any Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960 (Mah.XXIV of 1961) or any foreign consulate, by whatever name called, and on the 7th December 1996, being the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996, (Mah.XVI of 1997) were in their occupation or possession, means the principal officer-in-charge of such office or department or public sector undertaking or corporation or society or consulate; and

(b) in relation to any premises requisitioned or continued under requisition which were allotted by the State Government for residential purpose to any person and on the 7th December 1996, being the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996, (Mah.XVI of 1997) such person or his legal heir was in occupation or possession of such premises for his or such legal heir's own residence, means such person or legal heir;"

55. Section 27 of the Rent Control Act 1999, provides for the State Government or Government allottee to become a deemed tenant as on 7th December 1996. Section 27 reads thus :-

"27. State Government or Government allottee to become tenant of premises requisitioned or continued under requisition.

(1) On the 7th December 1996, that is the date of coming into force of the Bombay Rents, Hotel and Lodging House Rates Control, Bombay Land Requisition and Bombay Government Premises (Eviction) (Amendment) Act, 1996 (hereinafter in this section referred to as "the said date"),-

(a) the State Government, in respect of the premises requisitioned or continued under requisition and allotted to a Government allottee referred to in sub-clause (a) of clause (2) of section 7; and

(b) the Government allottee, in respect of the premises requisitioned or continued under requisition and allotted to him as referred to in sub-clause (b) of clause (2) of section 7,

shall, notwithstanding anything contained in this Act, or in the Bombay Land Requisition Act, 1948, or in any other law for the time being in force, or in any contract, or in any judgment, decree or order of any court passed on or after the 11th June 1996, or in any order of eviction issued by the Competent Authority, or by the Appellate Authority, under the Bombay Land Requisition Act, 1948, be deemed to have become, for the purposes of this Act, the tenant of the landlord; and such premises shall be deemed to have been let by the landlord to the State Government allottee, or, as the case may be, to such Government allottee, on payment of rent and permitted increases equal to the amount of compensation payable in respect of the premises immediately before the said date.

(2) Save as otherwise provided in this section or any other provisions of this Act, nothing in this section shall affect, -

(a) the rights of the landlord including his right to recover possession of the premises from such tenant on any of the grounds mentioned in section 16 or in any other section;

(b) the right of the landlord or such tenant to apply to the court for the fixation of standard rent and permitted increases under this Act, by reason only of the fact that the amount of the rent and permitted increases, if any, to be paid by such tenant to the landlord is determined under sub-section (1);

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

(emphasis supplied)

56. The question that arises is whether, by virtue of the provisions of Section 7, read with Section 27, of the Rent Act, 1999, Original Respondent No.3 and his heirs, Respondent Nos.3A and 3B, have become deemed tenants of the Petitioner.

57. In order to answer this question, first we would have to consider whether Original Respondent Nos.3 and Respondent Nos.3A and 3B were on 7th December 1996 in occupation or possession of Flat No.G-1 as per the provisions of Section 7(2)(b). If they are Government allottees under Section 7(2)(b), then, by virtue of the provisions of Section 27, they shall, notwithstanding anything contained in the Rent Act, 1999 or in the Requisition Act or in any other law for the time being in force, or in any contract, or in any judgment, decree or order of any court passed on or after the 11th June 1996, or in any order of eviction issued by the Competent

Authority, or by the Appellate Authority, under the Requisition Act be deemed to have become, for the purposes of the Rent Act, 1999, the tenants of the landlord.

58. It is the case of Respondent Nos.3A and 3B that, on 7th December 1996, they were in occupation and possession of Flat No.G-1 for their own residence and, therefore, they were Government allottees. Further, it is also their case that, since they were Government allottees on 7th December 1996, by virtue of the provisions of Section 27 of the Rent Act, 1999, they become deemed tenants, notwithstanding the Order dated 14th March 1996 evicting them.

59. In the case of *Gajjar* (supra), decided by the Supreme Court, the facts were that Respondent No.3 therein was a State Government employee. He retired from Government service on 30th September, 1993. As a Government servant, Respondent no.3 therein was allotted the premises in question. These were requisitioned premises, having been requisitioned under the order of requisition dated 17th April, 1958 under the Requisition Act. The order of requisition had been set aside but Respondent no.3 therein continued to be in possession of the premises. Whether Respondent no.3 therein had any right to continue with the possession of the premises despite

the order of requisition having been set aside and Respondent no.3 therein having retired from service, was the question for consideration before the Hon'ble Supreme Court. On these facts, the Hon'ble Supreme Court held as under:

"13. The continued requisition for a period of 30 years was held to be unreasonable by this Court in the case of *Grahak Sanstha Manch*. The effect of the said decision would have been the vacation of the premises by the State government and the Government allottees on account of invalidity of the order of requisition. With a view to overcome it, *Maharashtra Act XVI* of 1997 was enacted. That has been declared unconstitutional by the High Court but appeals are pending in this Court. For the present purposes, we assume these amendments to be valid. Would *section 5(1A)* make a retired person a Government allottee? The amendment was inserted w.e.f. 7th December, 1996. Respondent no.3 had already retired nearly three years earlier. In the present case, we are concerned with clause (b) of *Section 5(1A)* which inter alia deals with requisitioned premises that are allotted for residential purposes. Allowing a retired person to indefinitely remain in occupation or possession of the requisitioned premises was not the object of the amendments. It is also not possible to read clause (b) in such a manner on its plain language. The Statement of Objects and Reasons for Amendment Act XVI of 1997 inter alia provides as under :-

- "1.
2. ...
3. ...
4. ...
5. ...

14. It is evident that the object was to protect those who would have been rendered homeless though still in Government service on account of the shortage of accommodation with the Government and it being not possible for the Government to give suitable alternative accommodation to such Government

allottees. It is not and cannot be the case of the respondents that even after retirement, the Government had any obligation or policy to provide accommodation to retired employee. If the contention of respondent no.3 that he became a deemed tenant on account of 1997 amendment is accepted, it would show that the Government intended to confer a special benefit of providing residential accommodation to occupants of requisitioned accommodation as a superannuation benefit. That is clearly not the object of the amendments. If that was so, there would be a special class of employees. A class that is allotted, while in service, with accommodation which is requisitioned which class would get the special benefit even on superannuation. This class will become tenant under the original owner after retirement with the benefits of all protections under *Bombay Rents, Hotel and Lodging House Rent Rates Control Act, 1947*. Their heirs and successors may also subject themselves to eviction only on proof of one or the other ground of eviction provided in the Act. Thus, if one is fortunate enough to be allotted accommodation out of the requisitioned premises while in service, he gets by way of superannuation gift, the continued tenancy and others who may not be that fortunate to get allotment of such premises, will have to vacate Government accommodation as per the relevant rules after retirement. We are unable to attribute such an intention to the aforesaid amendments.

15. The deletion of the words 'allowed by the State Government to remain' from clause (b) of *Section 5(1A)* by Ordinance dated 26th December, 1997 also does not alter the status of an occupant like respondent no.3. The word 'allowed' in the aforesaid provision may mean some positive sanction and not mere slackness on the part of the Competent Authority in not taking action for getting the premises vacated. It is evident that the accommodation or possession of the premises within the meaning of clause (b) by a person who when allotted was a Government employee has to be on account of some right to occupy or possess the premises. The continued occupation or possession without any such right would not confer on the occupant status of a Government allottee simply on account of such person being in occupation or possession of requisitioned premises even after retirement. The reason for authorities not taking any action to get such premises vacated is explainable on account of the said premises being not available for allotment again to any existing Government servant. On this account, the authorities may not initiate any proceedings for getting the

possession but that would not confer on the occupant the status of 'Government Allottee' within the meaning of the term as defined in the Amendment Act. Thus, assuming the Amendments to be valid, we find that no right in favour of respondent no.3 to continue with the possession of the premises even after the invalidity of the order of requisition dated 17th April, 1958 and his retirement. Respondent no.3 cannot be treated as deemed tenant.

60. The decision of the Supreme Court in the case of ***Gajjar*** (supra), has been followed by a Division Bench of this Court in ***Ashok Chandrakant Palande vs. The State of Maharashtra & Ors.***⁸ In that case, the Petitioner therein had been occupying the premises in question pursuant to the allotment made in his favour whilst in service. Admittedly, the said premises were requisitioned by the State Government. However, while the Petitioner therein was in service, he was ordered to vacate the premises in terms of communication dated 30th July, 1994 issued by the Controller of Accommodation. In response to this communication, the Petitioner therein, by a letter dated 16th February, 1995, requested the Department to allow him to occupy the premises for a further period of three years. The decision of the Controller of Accommodation was not challenged by the Petitioner therein before any forum whatsoever. The Petitioner therein did not vacate the premises within the specified time and later on, the provisions of the Requisition Act were amended and corresponding amendment was effected in the provisions of the Rent Act, 1947. Taking advantage of that

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amendment, the Petitioner asserted that since the premises were not de-requisitioned and continued to remain under requisition until the amendment came into effect in 1996, coupled with the fact that the Petitioner was in occupation of the premises till then and was also in service till he attained the age of superannuation on 30th November, 2006, he has become deemed tenant and direct tenant of the owner of the premises. On these facts, the Division Bench of this Court held as follows:

“4. We are in agreement with the submission made by the Counsel for the respondents that the issue is no more res-integra. The same has been answered by the Apex Court in the case of Maheshchandra Trikamji Gajjar vs. State of Maharashtra & Ors., in particular paragraphs 14 and 15 thereof, which reads thus:

14. ...

15. ...

5. This decision of the Apex Court has been considered by the Division Bench of our High Court in a recent decision in the case of Neeta Ramesh Shelar vs. The Controller of Accommodation, Mumbai & Ors.⁹ decided on 17th June, 2010, in particular paragraph 12 onwards. In paragraph 12, the Court has adverted to another decision of the Division Bench of this Court reported in 2008 (1) Bom. C.R. 779 and opined that the amendments of 1996 do not protect those persons against whom order of eviction have already been passed. The fact-situation of the present case is similar to the fact-situation in this unreported decision in the case of Neeta Ramesh Shelar (supra). To get over this position, Counsel for the petitioner submits that the communication reproduced above dated 30th July, 1994 cannot be treated as an order of eviction issued by the Competent Authority in exercise of powers under section 8C of

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the Bombay Land Requisition Act, 1948 in as much as the grounds for eviction are limited to specified in sub-clause (a) of Sub-Section (1) of Section 8C of the Act. None of those grounds have been invoked by the Controller of Accommodation. It is, however, not disputed that the Controller of Accommodation is the Competent Authority. Assuming that the said order is illegal, the fact remains that the petitioner did not find it necessary to challenge the decision of the Competent Authority dated 30th July, 1994. In that sense, the petitioner continued to remain in unauthorized occupation on and from the expiry of the time to vacate the premises provided therein. Since the order of eviction has already been passed against the petitioner by the Competent Authority as held in the case of Neeta Ramesh Shelar, the petitioner cannot claim advantage of the amendment to the provisions of the Land Requisition Act. The claim of the petitioner that the petitioner has become deemed tenant by virtue of those amendment is therefore completely misplaced and unavailable to the petitioner.

6. *Hence, the petition is dismissed.”*

61. The decision in the case of ***Gajjar*** (supra) was also followed by a single Judge of this Court in ***S.A.Sule vs. State Government of Maharashtra & Ors.***¹⁰

62. In the case of ***The Sahyadri Central Consumer Co-op. Wholesale and Retail Stores Ltd.*** (supra), the judgement delivered by one of us (namely Justice G.S.Kulkarni), this Court, after considering the legal provisions and the judgements in the cases of ***Gajjar*** (supra), ***Ashok Chandrakant Palande*** (supra) and ***S.A.Sule*** (supra), held as follows:

“42. As regards the premises in question, the definition of

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Government allottee under Section 7 (2) (a) would be relevant, as the Petitioner was the original allottee of the said requisitioned premises. The Petitioner, so as to be conferred a status of a deemed tenant within the meaning of section 27 of the Rent Act, the State Government was required to continue the requisition of the premises in question by some positive order which is certainly not the case. The State Government could not have done so, considering the record and background of the notices issued to the petitioner, including to implement the order of the Supreme Court in *Grahak Sanstha Manch*. Thus surely it can be said that the petitioners premises no more continued to be 'requisitioned or continued to be requisitioned'. The record would **firstly** indicate that there was an eviction order dated 12 May 1967 passed against the petitioners which was received by the petitioner and was never assailed as noted above. **Secondly** also there was a further direction in the communication of the Controller dated 12 June 1989 pursuant to the decision of the Supreme Court in *H.D.Vora's case (supra)*, that the premises would be required to be released from requisition before 26 December 1990. **Thirdly** as set out by the petitioner in its own case before the Supreme Court in Writ Petition filed by *Grahak Sanstha Manch* the petitioners, averred that the petitioner was directed to vacate the premises on or before 26 December 1992. **Fourthly** thereafter there is an order dated 30 July 1992 of the Controller of Accommodation pursuant to the directions of the Supreme Court in *Grahak Sanstha Manch & ors (supra)* calling upon the petitioner to vacate the premises by 30 November 1994 for the reason that the Supreme Court had quashed the requisition of the petitioners premises. All these orders are before the cut off date of 7 December 1996 as Section 27(1) of the Rent Control Act would provide for continuing the status of a deemed tenant. Thus clearly the occupation and possession of the suit premises by the Petitioner was patently illegal. The Petitioner did not enjoy the status of being an allottee of the premises of which the requisition was continued, nor can it be said by any stretch of imagination that the premises stood to be requisitioned premises so that the benefit of Section 27 is available to the Petitioner to be a deemed tenant."

63. Applying the law laid down in the aforesaid judgements to the facts of the present case, it cannot be said that Original Respondent No.3 or

Respondent Nos.3A and 3B are deemed tenants by virtue of the provisions of Sections 7 and 27 of the Rent Act, 1999.

64. In order to qualify as a deemed tenant under Section 27, these Respondents have to be Government allottees as defined under Section 7(2). Section 7(2)(b) provides that, in relation to any premises requisitioned or continued under requisition, which were allotted by the State Government for residential purpose to any person, such person or his/her legal heir would be a Government allottee if such person or a legal heir was in occupation or possession of such premises for his/her residence on 7th December 1996.

65. In the judgments referred to above, it is held that ‘occupation’ or ‘possession’ in Section 7(2)(b) would mean legal occupation or possession and if a person has retired from the service of the Government before 7th December 1996 and an eviction order has been passed against him/her, before 7th December 1996, then such a person cannot be considered to be in ‘*occupation*’ or ‘*possession*’ under Section 7(2)(b).

66. In the present case, Original Respondent No.3 retired from Government service on 31st July 1990. Further, by a show cause notice dated 7th October 1995 issued under the provisions of the Requisition Act, Original

Respondent No.3 was called upon to show cause why he should not vacate Flat No.G-1 pursuant to the judgement of the Supreme Court in ***Grahak Sanstha Manch and Others*** (supra). By a letter dated 3rd November 1995, Original Respondent No.3 responded to the said show cause notice dated 7th October 1995. The said letter dated 3rd November 1995 was responded to by Respondent No.2 by its letter dated 7th February 1996. Further, by his letter dated 2nd March 1996, Original Respondent No.3 replied to the said letter dated 7th February 1996. Ultimately, the Order dated 14th March 1996 was passed by Respondent No.2. By the said Order, Respondent No.2 stated that, since Flat No.G-1 was under requisition for about 13 years, it was necessary to release the same from requisition at the earliest. Respondent No.2 further stated that, in view of the position explained in the said letter, he was satisfied that the premises should not be continued further under requisition. He, therefore, passed an Order in exercise of powers conferred by sub-section (1) of Section 8(C) of the Requisition Act and directed Original Respondent No.3 to vacate Flat No.G-1 within 30 days from the date of the receipt of the said Order and hand over vacant possession thereof to the Government. In these circumstances, applying the ratio of the aforesaid judgements, and especially of the Supreme Court in the case of ***Gajjar*** (supra), Original Respondent No.3 was not in legal occupation or possession of Flat No.G-1 as on 7th December 1996, and, therefore, was not a government allottee under

Section 7(2)(b) of the Rent Act, 1999 and therefore, was not a deemed tenant under Section 27 of the Rent Act, 1999. For these reasons, Respondent Nos.3A and 3B are also not deemed tenants.

67. As far as the judgement of this Court in *Kaiki Rustomji Alpaiwalla* (supra), relied upon by Mr.Khandeparkar is concerned, the same is of no assistance to the Respondents as the issues arising in the present Petition were neither discussed nor considered in the said judgement. Further, the said judgement has also not considered the judgement of the Supreme Court in the case of *Gajjar* (supra).

68. Further, in our view, the submission of Respondent No.3A that, even after passing of the eviction order, Respondent No.2 accepted the rent from Original Respondent No.3 does not take the case of the Respondent any further. The rent receipt produced by Respondent No.3A shows that some amount was paid as compensation for the months of September and October 1996. The said fact does not militate against the fact that the Original Respondent No.3 had retired from Government service on 31st July 1990 and the said Order dated 14th March 1996 had been passed against him, and therefore, he was not in legal occupation or possession of Flat No.G-1. For the same reasons, the issuance of another show cause notice on 29th August

2006, which resulted in an Order dated 9th April 2010, also does not carry the case of the Respondent Nos.3A and 3B any further. In our view, the fact remains that Original Respondent No.3 had retired from government service on 31st July 1990 and an Order directing him to vacate the premises had been passed on 14th March 1996 i.e. before the said date of 7th December 1996.

69. We are also unable to accept the submission of the Respondent Nos.3A and 3B that, in light of the judgement dated 5th August 1998 dismissing the present Writ Petition, the Petitioner cannot re-agitate this Petition. In this context, it is important to note that, after the present Petition was dismissed by the said Order dated 5th August 1998, the Petitioner filed a SLP (Civil) No.18365 of 1998 challenging the said Order dated 5th August 1998, which was admitted and converted into Civil Appeal No.920 of 1999. The said Civil Appeal No.920 of 1999 was tagged and heard along with Civil Appeal No.5138 of 1998 and other Civil Appeals, which resulted in the judgment of the Supreme Court in *Welfare Association* (supra). By the judgement of the Supreme Court in *Welfare Association* (supra), it was held that the Writ Petitions which were filed in the High Court raising issues other than vires of the Act would have to be remanded to the High Court for hearing on issues other than the issue as to the vires of the Rent Act. Further, by an Order dated 29th July 2003, Civil Appeal No.920 of 1999, along with

various other Civil Appeals, was remanded to the High Court for being decided consistently with the law laid down by the Court in the judgement of ***Welfare Association*** (supra). The said Order also held that the High Court shall be free to form its opinion and decide the issues other than those covered by the judgement of the Supreme Court in ***Welfare Association*** (supra).

70. In our view, the aforesaid facts clearly show that the present Writ Petition was remanded back to this Court for fresh consideration and decision on issues other than vires of the impugned Amendment Act, which had already been decided in ***Welfare Association*** (supra). In these circumstances, we are unable to accept the submission of the Respondent Nos. 3A and 3B that the Petitioner cannot re-agitate the issues in this Petition in light of the Order dated 5th August 1998 passed by this Court.

71. In light of the aforesaid discussion and finding, we pass the following orders:

- a. Respondent Nos. 3A and 3B are ordered and directed to hand over to the Petitioner quiet, vacant and peaceful possession of Flat No. G-1 on the Ground Floor of the Building Beacon at Plot

No.144, TPS Corner of west and south Avenue, Santacruz (West)
Bombay 400054, within a period of six months from the date of
this Order.

b. Rule is made absolute in the aforesaid terms.

c. In the facts and circumstances of the case, there will be no
order as to costs.

[FIRDOSH P. POONIWALLA, J.]

[G. S. KULKARNI, J.]