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DATTARAM S. VICHARE

v.

THUKARAM S. VICHARE AND ORS.

AUGUST 12, 1999

B

[V.N. KHARE AND S.N. PHUKAN, JJ.]

*Housing:*

*Maharashtra Housing and Area Development Act: Section 66—*  
C *Eviction—Appellant allotted premises by the Board under the Act—*  
*Respondent (appellant's real brother) residing in the premises since inception*  
*of the tenancy—Board aware of the fact of respondent's residing in the*  
*premises since inception—After inspections by the Board appellant alleged*  
*to have been served a show cause notice for eviction on the ground of sub-*  
D *letting—Eviction of the appellant from the premises ordered by the Competent*  
*Authority under the Act—Tenancy regularized in favour of the respondent—*  
*Appeal preferred before the Appellate Authority—Eviction order held to be*  
*illegal—No notice under Section 66 found to be served on appellant—*  
*Appellate order challenged by respondent in writ petition before the High*  
*Court—Eviction order passed by the Competent Authority held to be justified—*  
E *Appellant presumed to be served in view of the service of notice in*  
*regularization of tenancy proceedings—Order of the High Court appealed*  
*against—Held—Eviction order passed against the appellant is null and*  
*void—Service of notice is sine qua non for eviction proceedings—Service of*  
*notice in regularization of tenancy proceedings cannot be presumed to be*  
F *service in eviction proceedings—No vacancy in respect of tenancy in view*  
*of void eviction order—Consequently, order regularizing tenancy in favour*  
*of the respondent null and void.*

In 1965, the appellant was allotted a one room premises by the Bombay  
Housing and Area Development Board. The said Board is constituted under  
the Maharashtra Housing and Area Development Act. At the time of allotment,  
G as a requisite condition, the appellant filled and submitted Form 'C' mentioning  
the names of his real brother i.e. the respondent and his wife as the persons  
who would be occupying the premises. The said Form 'C' was accepted by the  
Board. The Board officials conducted two inspections of the premises on the  
basis of which it was reported that the appellant was not residing in the  
H premises and had sublet the premises to his own brother. In pursuance of

the said reports a notice was allegedly served upon the appellant requiring him to show cause why the tenancy in respect of the premises be not regularized in favour of the respondent (appellant's brother) who was in occupation of the premises. Apparently the appellant did not participate in the said proceedings before the Competent Authority. Consequently, the Competent Authority ordered eviction of the appellant from the premises and also regularized the tenancy in favour of the respondent.

Aggrieved by the abovesaid order of the Competent Authority, the appellant preferred an appeal before the Appellate Authority constituted under the Act. Allowing the appeal, the Appellate Authority held the eviction order to be illegal and void on the basis of the fact that no notice under Section 66 of the Act had been served. The said order of the Appellate Authority was challenged by the respondent before the High Court in a writ petition. The High Court allowed the writ petition holding the Competent Authority to be justified in terminating the tenancy of the appellant and regularizing it in favour of the respondent. The High Court also presumed that the appellant was served notice in eviction proceedings in view of his being served notice in respect of the proceedings for regularization of tenancy in favour of the respondent. Hence this appeal.

The appellant contended that the entire proceedings for his eviction and regularization of tenancy in favour of the respondent were illegal and void as no notice under Section 66 of the Act was served on him for his eviction. It was also contended that in view of the acceptance of Form 'C' submitted by him clearly mentioning the respondent and his wife to be the occupants of the said premises, it was not open to the Board to take sub-letting as a ground of eviction.

Allowing the appeal, this Court

**HELD 1.** According to the provisions of Section 66 of the Maharashtra Housing and Area Development Act, the Competent Authority is empowered to pass an order of eviction against a tenant if it is found that the tenant had sub-let the premises allotted to him without previous permission of the Competent Authority. In case any proceeding is to be taken for eviction of a tenant on the ground of sub-letting, the Competent Authority is required to serve a notice to that effect to the tenant. A proceeding for eviction against a tenant to be valid depends upon service of notice. In fact service of notice on the tenant is *sine qua non* for taking proceeding for his eviction. If it is found that there was no notice to the tenant, the proceedings for eviction is

**A** totally without jurisdiction and any order for eviction of the tenant in pursuance thereof would be nullity. In the present case there is no evidence on record to show that any notice, as contemplated under Section 66 of the Act, was served at all on the appellant. In the absence of any such notice no proceedings under Section 66 of the Act could have been taken for the eviction of the appellant. [410-A-B-C-D]

**B**

2. The provisions of the Act contemplate two independent proceedings followed by service of notices - (a) one in respect of proceeding for eviction of the tenant; and (b) other for regularization of tenancy. Both the proceedings can be initiated only on service of notice on the tenant. In the absence of notice, the proceeding for eviction of the tenant is invalid and as a result there would be no vacancy in the premises, which may not warrant initiating any proceeding for regularization of tenancy in favour of a third party. Further under the Act no such presumption is created about service of notice as held by the High Court. Under such circumstances, the service of notice in the regularization proceedings cannot be taken as service on the appellant in eviction proceedings. [410-E-F]

**C**

3. A tenant can be evicted on the ground of sub-letting when he sub-lets the premises without the previous permission of the Competent Authority. The Board having permitted the appellant's brother to reside in the premises, it was not open to it to terminate the tenancy of the appellant on the ground that he has sublet the premises to his brother; therefore, the ground on which the appellant's eviction was ordered was illegal. Since there was no vacancy, there was no question of regularization of tenancy in favour of the respondent. The order passed by the Competent Authority regularizing the tenancy in favour of the respondent was also illegal and void.

**D** [410-H; 411-A-B-C]

**E** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1802 of 1991.

From the Judgment and Order dated 3.12.1990 of the Bombay High Court in W.P. No. 123 of 1989.

**F** Uma Datta for the Appellant.

R.N. Keshwani for the Respondents.

The Judgment of the Court was delivered by

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**H** V.N. KHARE, J. The appellant herein was allotted a one-room premises,

being tenement No. 16/1097, situated at Abhuyadaya Nagar, Bombay in the year 1965 by the Bombay Housing and Area Development Board (hereinafter referred to as 'the Board'), established and constituted under the Maharashtra Housing and Area Development Act (hereinafter referred to as the 'Act'). At the time of allotment, the appellant was required to fill and submit Form 'C', indicating therein, the names of persons who would be occupying the premises. The appellant, in compliance thereof, submitted Form 'C', wherein he indicated that respondent - Thukaram S Vichare, who is his own real brother and his wife, as the persons forming part of his family, would be residing in the said premises. This Form 'C' submitted by the appellant, was accepted by the Board.

It appears that the officers of the Board inspected the premises and in their Inspection Reports dated 13.11.1985 and 23.12.1986, it was reported that the appellant was not residing in the premises and he has sublet the premises to his own brother. In pursuance of the said reports, a notice dated 15.10.1986 was alleged to have been served on the appellant wherein the appellant was required to show cause why the tenancy in respect of the premises in dispute be not regularized in favour of his brother, namely Shri Thukaram S. Vichare. who was in occupation of the premises. It appears that the appellant did not participate in the said proceedings before the Competent Authority. Consequently, the Competent Authority, on 20th March, 1987, ordered the eviction of the appellant from the premises and regularized the tenancy in favour of respondent- Shri. Thukaram S. Vichare.

The appellant, aggrieved against the order of the Competent Authority preferred an appeal before the Appellate Authority constituted under the Act. The Appellate Authority found that no notice under Section 66 of the Act having been served on the appellant tenant, the order for his eviction was illegal and void. Consequently, the appeal was allowed. Aggrieved, the respondent filed a writ petition before the High Court under Article 227 of the Constitution, challenging the Appellate Order dated 5.1.1989. The High Court took the view that the appellant having sublet the premises to the respondent, the Competent Authority was justified in terminating the tenancy of the appellant and settling the tenancy in favour of the respondent. The High Court also was of the view that since the appellant was served with the notice in the proceeding for regularizing the tenancy in favour of the respondent, the service of notice in respect of proceedings for his eviction has to be presumed. Consequently, High Court allowed the writ petition filed by the respondent. It is against the aforesaid judgment the appellant is in appeal

A before us.

Learned counsel appearing on behalf of the appellant has raised two submissions. The first submission is that, in the absence of any notice on the appellant for his eviction as required under Section 66 of the Act, the entire proceedings for his eviction and regularization of tenancy in favour of the respondent was illegal and void.

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The second submission is that the appellant, in Form 'C' having already informed the Board that his brother, namely respondent Thukaram S. Vichare and his wife would be residing in the said premises, and the same having been accepted by the Board, it was not open to the Board to question that the appellant has sublet the premises to his own brother.

C

After we heard learned counsel for the parties and perused the record, we find that both the submissions have merit. To appreciate the arguments of the parties, it is relevant to set out the provisions of the Act which are extracted below:-

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Section 66 of the Act reads as under:

"66. Power to evict certain persons from Authority premises

(1) If the Competent Authority is satisfied

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(a) that the person authorized to occupy any Authority premises has - (i) not paid rent or compensation or amount lawfully due from him in respect of such premises for a period of more than two months, or

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(ii) Sub-let, without the previous permission of the Authority, the whole or any part of such premises, or

(iii) committed, or is committing, any act which is destructive, or permanently injurious to such premises, or

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(iv) made, or is making, material addition to, or alteration in such premises without the previous permission of the Authority, or

(v) otherwise acted in contravention of any of the terms, express or implied, under which he is authorized to occupy such premises,

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or

(vi) failed to vacate the premises required by the Authority for the purpose of implementing any plan or project for the sale of tenements and accept the alternative accommodation offered by the Authority:

(b) that any person is in unauthorized occupation of any Authority premises:

the Competent Authority may, for reasons to be recorded in writing, by notice served (i) by post, or (ii) by affixing a copy of it on the outer door or some outer conspicuous part of such premises or (iii) in such other manner as may be prescribed, order that persons, as well as any other person, who may be in occupation of the whole or any part of the premises, to vacate the premises in unauthorized occupation, within 24 hours of the date of service of notice and in any other case within a period of seven days' of the date of such service.

(2) Before an order under sub-section (1) is made against any person, the Competent Authority shall issue, in the manner hereinafter provided a notice in writing calling upon all persons concerned to show cause within ten days why an order of eviction should not be made, the notice shall -

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are or may be in occupation of, or claim interest in, the Authority premises, to show cause against the proposed order, on or before such date as is specified in the notice.

If such person makes an application to the Competent Authority for the extension of the period specified in the notice, such Authority may grant the same on deposit of one hundred rupees and on such terms as to payment and recovery of the amount claimed in the notice, such Authority thinks fit.

Any written statement put in by any person and documents produced in pursuance of the notice, shall be filed with the record of the case, and such persons shall be entitled to appear before the Competent Authority by advocate, attorney or other legal practitioner.

The notice to be served under this sub-section shall be served in the manner provided for the service of another under sub-section (1);

A and thereupon, the notice shall be deemed to have been duly given to all persons concerned.”

The aforesaid provision show that the Competent Authority is empowered to pass an order of eviction against a tenant if it is found that the tenant has sub-let the premises allotted to him without previous permission of the Competent Authority. In case any proceeding is to be taken for eviction of a tenant on the ground of subletting, the Competent Authority is required to serve a notice to that effect to the tenant.

In the present case, what we find is that there is no evidence on record to show that any notice, as contemplated under Section 66 of the Act, was at all served on the appellant. In the absence of any such notice no proceedings under Section 66 of the Act could have been taken for eviction of the appellant. A proceeding for eviction against a tenant to be valid depends upon service of notice which is required to be given to the tenant. In fact service of notice on the tenant is sine qua non for taking proceeding for his eviction. If it is found that there was no notice to the tenant, the proceedings for his eviction is totally without jurisdiction and any order for eviction of the tenant in pursuance thereof would be nullity. It was urged on behalf of the respondent's counsel that the appellant having been served with the notice in the proceedings for regularization of tenancy in favour of the respondent, it would be presumed that he was served with the notice in eviction proceedings also. This argument of learned counsel runs contrary to the expressed provisions of the Act. The provisions of the Act contemplate two independent proceedings followed by service of notices - (a) one in respect of proceeding for eviction of the tenant; and (b) other for regularization of tenancy. Both the proceedings can be initiated only on service of notice on the tenant. In the absence of notice, the proceeding for eviction of the tenant is invalid and as a result there would be no vacancy in the premises which may not warrant initiating any proceeding for regularization of tenancy in favour of third party. Further under the Act no such presumption is created about service of notice as held by the High Court. Under such circumstances, the service of notice in the regularization proceedings cannot be taken as service on the appellant in eviction proceedings. In this case we also do not find any proceedings having been taken for eviction of the appellant as contemplated under Section 66 of the Act. We are, therefore, of the view that the order of eviction passed by the Competent Authority was void and ineffective.

So far as the second submission is concerned, a tenant can be evicted on the ground of sub-letting when he sub-lets the premises without the

previous permission of the Competent Authority. In the present case, at the time of allotment, the appellant submitted Form 'C' to the Board, wherein he specifically indicated that his brother, namely the respondent, along with his wife would be occupying the premises. The Board accepted the said Form 'C' and allotted the premises to the appellant. The Board after having permitted the appellant's brother to reside in the premises it was not open to it to terminate the tenancy of the appellant on the ground that he has sublet the premises to his brother. We, therefore, find that the ground on which appellant's eviction was ordered was illegal. Since there was no vacancy, there was no question of regularization of tenancy in favour of the respondent. Consequently, the order passed by the Competent Authority regularizing the tenancy in favour of the respondent was also illegal and void.

For the aforesaid reasons the order and judgment of the High Court is not sustainable in law. We accordingly set aside the judgment and order of the High Court under appeal. The appeal is allowed. There shall be no order as to costs.

R.C.K.

Appeal allowed.