

**Neha Chandrakant Shroff & Anr.**

v.

**The State of Maharashtra & Ors.**

(Civil Appeal No. 5098 of 2025)

08 April 2025

**[J.B. Pardiwala and R. Mahadevan, JJ.]**

#### **Issue for Consideration**

Issue arose as regards the order passed by the High Court, rejecting the writ petition filed by the appellants u/Article 226 of the Constitution praying for the possession of property given for temporary occupation to police officials in 1940.

#### **Headnotes<sup>†</sup>**

**Constitution of India – Art.226 – Writ jurisdiction – Exercise of, when alternative remedy available – Writ petition by the appellant seeking for possession of their two flats which were permitted to be temporarily occupied by the police department at their request to meet the requirement of housing police officers in the year 1940 – High Court rejected the petition holding that it was not inclined to exercise jurisdiction u/Art.226 because there was no written order of requisition – Correctness:**

**Held:** High Court should have readily exercised its writ jurisdiction – Constitutional powers vested in High Court or Supreme Court cannot be fettered by any alternative remedy available to the party concerned – Injustice, whenever and wherever it takes place, should be struck down as an anathema to the rule of law and the provisions of the Constitution – High Court was hesitant to exercise its writ jurisdiction as it got confused on the aspect of nature of possession – High Court found the possession to be permissive in nature and thought fit to relegate the appellants to avail alternative remedy of filing a suit – High Court should have kept in mind that the year was 1940 when the country was ruled by Britishers and was fighting hard to seek independence – At that time, department might have persuaded the appellants/predecessors in title to part

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with the possession of two flats for Police Department – However, it has been 84 years that the Police Department was in occupation and for past eighteen years even rent was not paid – If the appellants are asked to institute a suit would be like adding insult to the injury – Rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion – There can be many contingencies in which High Court may be justified in exercising its writ jurisdiction inspite of availability of an alternative remedy – Thus, the impugned judgment passed by the High Court set aside – Respondents to handover vacant and peaceful possession of both the flats to the appellants along with the arrears of rent. [Paras 6, 8-12]

**List of Acts**

Constitution of India; Right to Information Act, 2005; Maharashtra Land Requisition Act, 1948; Maharashtra Rent Control Act, 1999

**List of Keywords**

Writ Petition; Exclusion of writ jurisdiction; Permissive possession; Recovery of possession; Housing police officials; Temporary occupation; Order of requisition; Possession; Constitutional powers; Anathema to rule of law; Writ jurisdiction; Availability of alternative remedy; Police department; Requirement of housing police officers.

**Case Arising From**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5098 of 2025

From the Judgment and Order dated 30.04.2024 of the High Court of Judicature at Bombay in WP No. 2135 of 2009

**Appearances for Parties**

*Advs. for the Appellants:*

Azmat Hayat Amanullah, Ms. Aishwarya Kantawala, Ms. Rebecca Mishra.

*Advs. for the Respondents:*

Shekhar Naphade, Sr. Adv., Shreyas Lalit, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Aditya Krishna, Adarsh Dubey.

**Supreme Court Reports****Judgment / Order of the Supreme Court****Order**

1. Leave granted.
2. This appeal arises from the impugned judgment passed by the High Court of Judicature at Bombay dated 30<sup>th</sup> April, 2024 in Writ Petition No.2135 of 2009 by which the Writ Petition filed by the appellants herein against the State of Maharashtra and Others came to be rejected. The impugned judgment dated 30<sup>th</sup> April, 2024 reads thus:-
  1. *In this writ petition, filed under Article 226 of the Constitution of India, the petitioners seek a declaration that the action on the part of the respondents in not releasing and thereafter restoring the possession of Flat Nos. 11 and 12 on the 3rd floor of the building named 'Amar Bhavan', A.R. Rangekar Marg, Opera House, Mumbai 400 007 that belong to the petitioners is unlawful, illegal and in violation of the petitioners' fundamental rights. The petitioners accordingly pray that the respondents be directed to forthwith vacate and handover peaceful possession of the aforesaid premises to them.*
  2. *It is the case of the petitioners, as pleaded in the writ petition, that in or about the year 1940, the aforesaid two flats were permitted to be temporarily occupied by the Police Department at their request so as to meet the requirement of housing police officers to enable maintenance of the law and order situation. The petitioners have pleaded that there was no written contract executed between their predecessor and the Police Department. Certain amounts were paid by the Police Department to the predecessor on monthly basis and till about 31st December 2007, Rs.611/- per month was being paid. On 10th September 1997, the predecessor of the petitioners, through his Advocate had issued a communication to the respondents raising a grievance with regard to non-payment of the monthly amount. According to the petitioners, since they were in need of the aforesaid premises, a request was made to the respondents to return possession of the same. Since the same was not done, this writ petition came to be filed.*

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3. Dr. Sujay Kantawala, learned counsel for the petitioners in support of the prayers made in the writ petition referred to the orders passed in Writ Petition Nos. 1108 of 2005, 343 of 2005 and 344 of 2005 to contend that in the aforesaid writ petitions, the possession of the respective premises were handed over by the respondents to the concerned petitioners. Though this writ petition was to be heard along with the aforesaid writ petitions, it could not be heard when the said writ petitions were decided. He submits that on similar terms, a direction be issued to the respondents to handover possession of the aforesaid two flats. Without prejudice to the aforesaid, it was contended that the occupation of the respondents since the year 1940 was on the backdrop that the two flats had been requisitioned by the respondents for temporary use of the Police Department. Though there was no written order requisitioning these two flats, it was undisputed that possession of the same was handed over to facilitate convenience of the Police Department since it intended to house its police officers. Inviting attention to the information supplied to the petitioners under the provisions of Right to Information Act, 2005 (for short, "the Act of 2005") pursuant to the application dated 25th June 2007, it was pointed out that copy of written Lease Deed was not available even with the respondents. Further information supplied in October, 2020 indicated that the respondents had no record to indicate the period when the monthly payment towards occupying these flats was paid. Since the petitioners were now in need of the said two flats, it was obligatory on the part of the respondents to handover possession of the same. As regards applicability of the provisions of the Maharashtra Land Requisition Act, 1948 (for short, "Act of 1948"), as urged by the respondents is concerned, it was submitted that since the two flats were orally requisitioned in the year 1940, the provisions of the said Act would not apply retrospectively. To substantiate this contention as regards the entitlement to receive back possession, the learned counsel for the petitioners placed reliance on the decisions of the Supreme Court in H.D. Vora Vs. State of Maharashtra and Ors. (1984) 2 SCC 337; Grahak Sanstha Manch and

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*Ors. Vs. State of Maharashtra (1994) 4 SCC 192; Roy Estate Vs. State of Jharkhand and Ors. (2009) 12 SCC 194, as well as the judgment of this Court in Geeta Mangesh Laud and Ors. Vs. Appellate Authority and the Principal Secretary, General Administration Department and Ors., with connected writ petitions, 2023 SCC OnLine Bom 1004. This decision was challenged before the Supreme Court unsuccessfully. It was thus urged that since possession of the said flats had been handed over in the year 1940 on account of the need of the Police Department then and about 84 years had elapsed since handing over of such possession, the petitioners were entitled to receive back possession of the same.*

*4. Mr. Mohit Jadhav, learned Additional Government Pleader opposed aforesaid submissions. Inviting attention to the pleadings in the writ petition, it was submitted that in absence of any written order of requisition, it was not open for the petitioners to contend that the respondents had requisitioned the two flats in the year 1940. On the contrary, it was submitted that possession of the same was handed over voluntarily and monthly amounts were being paid to the predecessor of the petitioners, which was evident from the record. According to him, the grievance made in the writ petition was also with regard to non-payment of the monthly amounts, which would thus indicate that the petitioners were seeking eviction of the respondents without terminating their license/tenancy. Attention was invited to the communication dated 30th July 2012 issued on behalf of the petitioners raising a grievance that since January 2008, the monthly amounts towards occupation of the two flats were not being paid. The aforesaid would therefore indicate that there was no requisition of the said premises and in fact, on the basis of an oral agreement, the respondents were put in possession. It was further submitted that this Court had entertained a somewhat similar grievance in Writ Petition Nos.1429 of 1990 and 1430 of 1990 (Anil Harish and Ors. Vs. Chief Secretary, Government of Maharashtra and Anr.). The said writ petitions had been allowed by the judgment dated 23rd*

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*April 2004 and an order of eviction along with award of damages came to be passed. The said judgment was challenged before the Supreme Court and by its judgment dated 15th November 2007 (Chief Secretary, Government of Maharashtra and Anr. Vs. Anil Harish and Ors.) the appeal was allowed and the judgment of this Court was set aside on the ground that the remedy available to the petitioners therein under the Maharashtra Rent Control Act, 1999 ought to have been invoked especially since that was the statutory remedy available. The High Court in exercise of jurisdiction under Article 226 of the Constitution of India ought not to have entertained the writ petition. On this basis, it was urged that in the absence of any written order of requisition, the prayers made by the petitioners may not be granted and the petitioners be directed to avail the statutory remedy.*

*5. We have heard the learned counsel for the parties at length and with their assistance, we have perused the documentary material on record. It is an admitted position that sometime in the year 1940, possession of Flat Nos. 11 and 12 was voluntarily handed over by the predecessor of the petitioners to the Police Authorities. It is further admitted that there is no written order requisitioning the aforesaid two flats for temporary use by the Police Authorities. The dispute however is with regard to nature of occupation of the Police Authorities. While the petitioners seek to contend that such occupation is pursuant to the two flats being requisitioned for use of the Police Authorities, the respondents contend that having paid monthly amounts to the predecessor of the petitioners and thereafter to the petitioners, the occupation of the Police Department is not pursuant to any requisition of the premises and that its possession is permissive in nature. The documentary material on record in the form of information supplied under the provisions of the Act of 2005 indicates that there is no written Lease Deed on the basis of which the Police Authorities have entered into possession. The documents also show that monthly amounts were paid regularly till December, 2007 and the*

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*petitioners had made a grievance that since January, 2008, such payments were not being made. On the basis of the material on record, it cannot be concluded that the occupation of the Police Authorities is pursuant to any order of requisition. There being a dispute with regard to the nature of their occupation, it would not be expedient for this Court to factually adjudicate this aspect and record a finding as regards the nature of occupation of the respondents. We thus find that there is no material on record to substantiate the petitioners' claim that the said two flats were requisitioned on the basis of which the Police Authorities entered into possession.*

*6. It is true that the Act of 1948 came into force after possession of the two flats was taken over in the year 1940. The same however would not have material bearing on this issue in the light of the fact that the nature of possession of the respondents cannot be stated to be pursuant to any order of requisition. The ratio of the decisions relied upon by the learned counsel for the petitioners cannot be applied to the facts of the present case.*

*Heavy reliance was placed by the learned counsel for the petitioners on the orders passed in various writ petitions, as referred above, along with which this writ petition was to be heard. However, perusal of all the orders indicates that the parties therein had arrived at a settlement and had filed Consent Minutes of Order. The writ petitions were not adjudicated on merits but the respondents therein agreed to handover possession of the premises in question therein. Hence, on facts, the aforesaid adjudication cannot be taken into consideration. On the contrary, the learned Additional Government Pleader is justified in relying upon the decision of the Supreme Court in Chief Secretary, Government of Maharashtra Vs. Anil Harish and others (supra).*

*7. We are not inclined to exercise jurisdiction under Article 226 of the Constitution of India in view of the fact that there is no written order of requisition. Since the manner in which the respondents entered into possession of the*

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*premises is disputed, liberty is granted to the petitioners to avail appropriate remedy as available in law to seek appropriate reliefs. Keeping all points raised in the writ petition on merits open, the same is dismissed with no order as to costs. Rule stands discharged.”*

3. Heard the learned counsel appearing for the appellants and Mr. Shreyas Lalit, the learned counsel appearing for the State of Maharashtra and others.
4. Mr. Nitin Pawar, the Deputy Commissioner of Police, Office of the Commissioner of Police (Headquarter), Mumbai, Maharashtra is also personally present today in the Court. We had some dialogue with Mr. Pawar. According to the Officer, present before us, there are two families of Police Officers residing in the two flats in question. In fact, it has come to our notice today for the first time that the flats in question are not being utilized as an Office of the Police Department but two families are in fact residing in these two flats in question. The monthly rent of each flat admeasuring 600 square feet situated in South Bombay is Rs.700/- (Rupees Seven Hundred) per month.
5. This is the right stage for us to look into the two orders passed by us dated 28.01.2025 and 03.03.2025 respectively. The order dated 28.01.2025 and 03.03.2025 respectively read thus:-

**ORDER DATED 28.01.2025**

*“1. The respondents are in occupation of two flats of the ownership of the petitioners herein since the year 1940. At the relevant point of time, there was no written document in the form of rent note or lease agreement or any other form of understanding reduced into writing. However, it is not in dispute that the department is occupying two flats as on date.*

*2. It appears that up to the year 2007 a very paltry amount was being paid towards rent. Thereafter nothing was been paid till 2024. We are informed that again in 2004 some amount was paid.*

*3. The petitioners are desperately seeking to get back the possession of the property, in question, which is in occupation of the respondents.*

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4. *We are of the view that the parties should sit together and try to resolve the dispute. If the respondents want to retain the possession they must enter into an appropriate lease agreement providing for payment of rent determinable on the market value of the property. Of course this would be without prejudice to the rights and contentions of the petitioners, they propose to raise before this Court while assailing the impugned judgment passed of the High Court.*
5. *It has been more than 80 years that the department has been occupying the two flats. The department can very easily shift to any other place of their choice and allow the petitioners to use their own property.*
6. *We hope and trust that Mr. Shreyas Lalit, the learned counsel appearing for the respondents is able to persuade his clients to bring an end to this litigation by some equitable settlement.*
7. *Post this matter after four weeks.”*

**ORDER DATED 28.01.2025**

- “1. *The learned counsel appearing for the parties jointly submitted that talks of settlement are in progress. We are fully conversant with the facts of this case. We once again request Mr. Shreyas U. Lalit, learned counsel appearing for the respondents to impress upon his client to resolve the dispute in any circumstances.*
2. *We reiterate once again that the State cannot retain the property for all times to come. We are informed that the petitioners herein have put forward three proposals before the State:*
  - (I) *That the State may retain the premises by paying market rent as on date.*
  - (II) *The State may either outright purchase the property; or*
  - (III) *The State should hand over vacant and peaceful possession of the property.*- 3. *We are of the view that all the three proposals are very reasonable and State must consider either of the three very seriously.*

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4. *We adjourn this matter for one last time, on the next date, if some settlement is placed on record well and good, otherwise we shall proceed to pass final orders.*
5. *List the matter after four weeks."*
6. The orders dated 28.01.2025 and 03.03.2025 respectively quoted above make the picture abundantly clear. There is no response worth the name at the end of the respondents to the three proposals referred to by us in our order dated 3.04.2025. In such circumstances, we need not hear the parties anymore on any other issues. We set aside the impugned judgment passed by the High Court and allow the original writ petition preferred by the appellants before the High Court. We grant four months' time to the respondents from today to handover vacant and peaceful possession of both the flats in question to the appellants along with the arrears of rent accrued till the date of handing over of the possession of the two flats. We are informed that the Department has not been paying rent from 2008 onwards. The rent shall be calculated accordingly and be paid to the appellants.
7. We direct Shri Nitin Pawar, the Deputy Commissioner of Police who is personally present in the court to file an undertaking on oath stating that the Department shall hand over vacant and peaceful possession of the two flats in question definitely to the appellants within a period of four months from today. Such undertaking in the form of affidavit shall be filed within one week from today before the Registry of this Court.
8. We are happy that we have been able to do justice with the appellants who have been frantically trying to get back their property (two flats) in question which the State occupied way back in the year 1940 without any written order requisitioning the two flats for temporary use by the Police authorities or any lease deed in writing. It appears that the High Court was hesitant to exercise its writ jurisdiction as it got confused on the aspect of nature of possession. The High Court found the possession to be permissive in nature. In such circumstances, the High Court thought fit to relegate the appellants to avail alternative remedy of filing a suit.
9. The High Court should have kept the year in mind i.e. 1940. This country was ruled by the Britishers. The country was fighting hard to seek independence from the Britishers. Bombay in the year

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1940 was altogether different. At the relevant point of time, the Department perhaps might have persuaded the appellants or their predecessors in title to part with the possession of the two flats for the Police Department. However, it has been now 84 years that the Police Department has been in occupation and use of the two flats. Look at the conduct of the Department. We are informed that past eighteen years even rent has not been paid.

10. To ask the appellants to file a suit and recover the possession would be like adding insult to the injury. At this point of time, if the appellants are asked to institute a suit, we wonder how many years it would take by the time the litigation would come to an end if at all it reaches upto the highest Court of the country. These are the hard facts, the High Courts are expected to keep in mind in today's times.
11. The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. There can be many contingencies in which the High Court may be justified in exercising its writ jurisdiction inspite of availability of an alternative remedy.
12. This is one of those cases wherein the High Court should have readily exercised its writ jurisdiction. The constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the party concerned. Injustice, whenever and wherever it takes place, should be struck down as an anathema to the rule of law and the provisions of the Constitution.
13. With the aforesaid, the appeal stands disposed of.
14. Pending application(s), if any, stands disposed of.

*Result of the case:* Appeal disposed of.

<sup>†</sup>Headnotes prepared by: Nidhi Jain