
(1988) 02 BOM CK 0016

In the Bombay High Court

Case No : Criminal Writ Petition No. 13 of 1988

Abdul Majid Ilahibux Khan

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 12-02-1988

Acts Referred:

Maharashtra Regional and Town Planning Act, 1966 — Section 52

Citation : (1988) 02 BOM CK 0016

Hon'ble Judges : D.N. Mehta, J;A.C. Agarwal, J

Bench : Division Bench

Judgement

Mehta, J.—The Order of Detention dated 14-10-1987 has been impugned in this Criminal Writ Petition by Abdul Majid Ilahibux Khan, hereinafter referred to as "the Detenu". The Order of Detention dated 14-10-1987 was passed by the Commissioner of Police, Greater Bombay, under the provisions of sub-section (1) of Section 3 of the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug-offenders Act, 1981 (Act No. LV of 1981) (hereinafter referred to as "the said Act"). The said Order of Detention was served on the Detenu on 20-10-1987 on the ground that the Detenu was a slumlord as defined under the said Act and that his activities were prejudicial to the maintenance of public order. The grounds on which the Order of Detention was based were served on the Detenu on 24-10-1987.

2. Shri Rele, the learned Advocate appearing on behalf of the Detenu, has submitted that in the instant case the grounds only established the fact that the Detenu was a slumlord as defined u/s 2(f) of the said Act. There was nothing in the grounds to show that the activities of the Detenu as a slumlord were in any manner prejudicial to the maintenance of public order. Shri Rele contended that under the provisions of the said Act, the Detaining Authority must show, firstly, that the Detenu was a slumlord or a bootlegger or a drug-offender and thereafter proceed to show that the activities of that person were prejudicial to the maintenance of public order. Looked at from that point of view, argued Shri Rele,

in the instant case, it could not be stated that the Detaining authority had established that the activities of the Detenu as a slumlord were prejudicial to the maintenance of public order. In this view of the matter, the order of Detention stood vitiated and the same ought to be struck down.

3. Shri Barday, the learned Public Prosecutor, has contended that in the instant case the Detaining authority had relied on as many as five instances which showed, firstly, that the Detenu was a slumlord, and further that his activities had caused alarm, danger and feeling of insecurity amongst the persons living in the locality, particularly those who were the tenants of the Detenu, Shri Barday pointed out that in as many as three instances it was shown that the Detenu had abused and given threats of assault to his tenants when they demanded refund of the amount which they had paid to the Detenu. These activities, according to Shri Barday, were grave enough to be termed as prejudicial to the maintenance of public order.

4. Now, in order to appreciate the submission made by the learned Advocates, it will be relevant to scrutinise certain provisions to the said Act.

A slumlord had been defined u/s 2(f) of the said Act as :-

"(f) "slumlord" means a person, who illegally takes possession of any lands (whether belonging to Government, local authority or any other person) or enters into or creates illegal tenancies or leave and licence agreements or any other agreements in respect of such lands, or who constructs unauthorised structures thereon for sale or hire, or gives such lands to any persons on rental or leave and licence basis for construction, or use and occupation, of unauthorised structures, or who knowingly gives financial aid to any persons for taking illegal possession of such lands, or for construction of unauthorised structures thereon, or who collects or attempts to collect from any occupiers of such lands rent, compensation or other charges by criminal intimidation, or who evicts or attempts to evict any such occupiers by force without resorting to the lawful procedure, or who abets in any manner the doing of any of the above mentioned things."

Section 2, clause (a) defines the expression - "acting in any manner prejudicial to the maintenance of public order."

(i) in the case of a slumlord, when he is engaged, or is making preparations for engaging, in any of his activities as a slumlord, which affect adversely, or are likely to affect adversely, the maintenance of public order;

(ii) to (iii)

Explanation - For the purpose of this clause (a), public order shall be deemed to have been affected adversely, or shall be deemed likely, to be affected adversely, inter alia, if any of the activities of any of the persons referred to in this clause, directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity, among the general public or any

section there of or a grave or widespread danger to life or public health."

Section 3(1) of the said Act is important for it empowers the State Government to detain either a slumlord, or a bootlegger or a drug-offender under certain circumstances. Section 3(1) of the Said Act is in the following terms :-

"3(1). The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it is necessary so to do, make an order directing that such person be detained."

5. On a perusal of the scheme of the said Act, it therefore appears that the Detaining Authority has to establish two premises in order to arrive at his subjective satisfaction that it was necessary to detain a person; firstly, that the said person was either a slumlord, a bootlegger, or a drug-offender, and secondly, that his activities in such character were prejudicial to the maintenance of public order. This aspect of the said Act has been elucidated by a Division Bench of this Court in the case of *Ramesh v. R. D. Tyagi* 1986 Cri LJ 1421, wherein the learned Judges observed (at P. 1423) :-

"6. The question as to whether particular incidents are such as to result in the subjective satisfaction of the Detaining Authority to take action under the relevant detention law cannot be gone into by the Court unless it is demonstrated that the subjective satisfaction is clearly unsupportable by the material relied upon by the Detaining Authority. As far as the present Act is concerned, there are two conditions precedent before the taking of action under S. 3 of the Act. As we have already mentioned above, a person must be a bootlegger, but this by itself is not sufficient to support an action under S. 3 of the Act. But while arriving at a finding as to whether a particular person is a bootlegger or not, the Detaining Authority considers the material placed before him and on the material so placed before him he comes to an objective finding whether a particular person is a bootlegger or not. Here the question is not one of subjective satisfaction. If, therefore, several incidents are brought to the notice of the Detaining Authority and considering those incidents, he comes to a conclusion that a particular person is a bootlegger, then that will be an objective determination of fact and not a subjective satisfaction. In such a case, it cannot be said that if one or the other of the incidents is not supportable by the material on record, the determination that a particular person is a bootlegger made by the Detaining Authority is erroneous or cannot be sustained provided, however, that the other material on which he has based this finding can clearly support that finding.

7. On the other hand, considering the activities of a particular person such as a bootlegger under the said Act, if the Detaining authority decides to act under S. 3, then he must be satisfied that considering the activities of the bootlegger, it is necessary to detain him with a view to preventing him from acting in any manner prejudicial to the maintenance of the public order. This satisfaction is obviously

subjective and is not amenable to judicial review excepting in certain exceptional circumstances. In order to be satisfied that it is necessary to detain a person with a view to preventing him from acting in any manner prejudicial to the maintenance of the public order, naturally authority will have to consider those incidents which have a bearing upon the maintenance of public. To repeat, merely because a particular person is a bootlegger it is not a factor which has a bearing upon the maintenance of public order. It is only when any of his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order that the subjective satisfaction mentioned in S. 3 can legitimately be arrived at. These peculiar features of this Act must, therefore, be clearly borne in mind."

6. Therefore, it is necessary for the Detaining Authority to satisfy himself not only that a particular person is a slumlord but further that the activities of that slumlord affect adversely or are likely to affect adversely the maintenance of public order. It is then alone that the subjective satisfaction mentioned in "tion 3 of the said Act can be legitimately arrived at by the Detaining authority.

7. Now, turning to the facts of the instant case, we find that in paragraph 1 of the grounds of detention, it was stated that in the year 1987 the Detenu had encroached upon the Government land at Antop Hill, Bombay and had unauthorisedly constructed a chawl consisting of eight rooms of a total area of 1200 sq.ft. One of the eight rooms was sold to one Harilal Daggal Jaiswal for a consideration of Rs. 5000/-.

The second incident related to a person named Mohammed Alkama Mohd. Saeed Shaikh, who became a monthly tenant of the Detenu after paying a sum of Rs. 1,400/- in cash as a deposit to the Detenu and on a monthly rent of Rs. 100/-. At time of accepting the said Mohammed Alkama Modh. Saeed Shaikh as a tenant, the Detenu had promised to provide essential services such as water connection, toilet facility and electricity. When said Mohammed Alkama Mohd. Saeed Shaikh reminded the Detenu of his promise to provide the aforesaid facilities, he demanded more monies. When the said Mohammed Alkama Modh. Saeed Shaikh refused to oblige the Detenu, the latter got annoyed, abused the said Mohammed Alkama Modh. Saeed Shaikh and threatened him with assault and warned him to vacate the room.

In the third incident one Fakruddin Khudabux Sheikh was accepted by the Detenu as a tenant in his chawl on a payment of Rs. 500/- as part payment of the sum of Rs. 2000/- as deposit and on a monthly rent of Rs. 100/-. In this instance also the Detenu promised his said tenant the facilities of water, toilet and electricity. When the said Fakruddin Khudabux Shaikh reminded the Detenu of his promise, the Detenu abused and threatened to assault Fakruddin Khudabux Shaikh and ordered him to vacate the room.

In the fourth incident Anokhilal Hariram Yadav was accepted by the Detenu as his tenant on his paying a sum of Rs. 1000/- as part payment of a deposit of Rs.

2000/- and on a monthly rent of Rs. 100/-. In this incident also the Detenu promised the tenant with the aforesaid facilities. When the said tenant reminded him of his promise to provide and threatened to assault the said Anokhilal Hariram Yadav and ordered him to vacate the room.

Finally, the Detaining Authority relied on a fifth incident for basing his Order of Detention which occurred on 17-9-1987. On that day P.S.I. Warang, accompanied by his staff and one Pandurang Ramchandra Chalke, the Surveyor from the office of the Deputy Controller of Encroachments and Unauthorised Structures, Zone-I, Parel, Bombay, visited the Sangam Nagar Zopadpatti, situate on Antop Hill. Chalke then pointed out one of the unauthorised chawls known as "Abdul Majid Ilahibux Chawl", belonging to the Detenu, consisting of eight rooms, which was constructed on the land belonging to the State Government. In this connection, a case u/s 52 of the Maharashtra Regional and Town Planning Act, 1966 was registered against the Detenu by the Antop Hill Police Station. The Detenu was arrested in this case and was subsequently released on bail. The case is under investigation.

8. Now, there is no dispute between the parties that the first incident concerning Harilal Daggal Jaiswal and the fifth incident concerning the raid by the Antop Hill Police Station accompanied by the Surveyor from the office of the Deputy Controller, Unauthorised Structures, are incidents which only established the fact that the Detenu was a slumlord. The area of controversy in the instant case relates to the second, third and fourth incidents in the course of which the Detenu had abused and threatened his three tenants with assault and ordered them to vacate their respective rooms.

9. Shri Barday has relied on two unreported Judgments of the Division Bench of this Court, the first being the case of Laxmi Vijay Salunkhe v. D. S. Soman delivered on 4-12-1985 (Reported in (1986) 1 Crimes 204 (Bom.) by R. A. Jahagirdar and Daud, JJ. This was also a case wherein the Detenu was a slumlord and had abused and threatened his tenants. The learned Judges were pleased to hold :-

"On the fact of this case we are satisfied that looking to the frequency of the acts of the detenu, the circumstances in which the threats have been given and the threat running through all these incidents, namely his character as a slumlord, they have got the effect of creating an alarm in the minds of persons who are his tenants. It should also not be forgotten that the threats which he has given to the tenants who have refused to yield to his illegal demands will necessarily have a frightening effect upon the other persons living in the slum area. If this is the conclusion which has been drawn by the detaining authority on the facts of this case, we are unable to say that that conclusion is one which no rational person can draw."

10. It is pertinent to point out that the aforesaid Judgment related to a case of a Detenu who had eleven tenants and who was involved in as many as seven

incidents of abuses, threats and assaults on men and women and in respect of certain incidents, N.C. Complaints had been lodged at the Police Station.

11. In the second unreported Judgment in the case of Pandian Kandswamy Nadar v. State of Maharashtra, (Criminal Writ Petn. No. 28 of 1986) delivered by Dharmadhikari & R. R. Jahagirdhar, JJ. on 13-3-1986, (Reported in Pandian Kandsway Nadar Vs. State of Maharashtra,) Their Lordships were pleased to observe :-

"Therefore it is quite clear from the grounds of detention that the detenu was acting as a slumlord, and used to give threats which necessarily had frightening effect upon the persons living in the slum area. The activities of the detenu constitute a chain of action permitting an inference that his conduct was prejudicial to the maintenance of public order."

12. It is relevant to point out that in the aforesaid case the Detenu had seventeen tenants in his unauthorised chawl, that he abused and threatened his tenants in the series of instances and in one instance assaulted one of his tenants with a sickle. We have not the least doubt that on the facts prevailing in each case. Their Lordships were justified in reaching the conclusion which they did. The question which is posed before us is : whether the three cases in which the Detenu was involved with his tenants and in the course of which he is alleged to have abused and threatened them with assault were sufficient to cause danger or alarm or a feeling of insecurity amongst the inhabitants of the chawl or in the persons residing in the surrounding area ? In deciding the issue whether a particular incident or incidents affect adversely the maintenance of public order, the question which one has to ask is : Does it lead to a disturbance of the current of life of the community so as to amount to destabilising of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed ? (See Arun Ghosh Vs. State of West Bengal,).

13. On scrutinising the three incidents recited heretofore, we are of the view that these incidents are stray incidents concerning the three tenants of the Detenu. We do not think that the incidents are such that they would create either alarm, or danger, or a feeling of insecurity amongst the persons living in the locality. It is necessary to remind oneself of the definition of a "slumlord" appearing in section 2(f) of the said Act cited heretofore. A slumlord has been described inter alia as one who collects from the occupiers rent, compensation or charges by criminal intimidation, evicts or attempts to evict any such occupier by force without resorting to the lawful procedure. We are, therefore, of the opinion that the Detaining Authority has only established in the instant case the fact that the Detenu is a slumlord. The Detaining Authority has failed to show that the activities of the Detenu were in any manner prejudicial to the maintenance of public order. In these circumstances, the Order of Detention stands vitiated and the same deserves to be struck down.

14. In the result, the Rule is made absolute. The Detenu shall be released

forthwith unless required in any other case.

15. Petition allowed.