
(2004) 02 BOM CK 0092

In the Bombay High Court

Case No : Writ Petition No. 2304 of 1991

B and C Kamgar Sanghatana

APPELLANT

Vs

Executive Engineer, Public Works Division and Others

RESPONDENT

Date of Decision : 12-02-2004

Acts Referred:

Bombay Government Premises (Eviction) Act, 1955 — Section 3, 4, 4(2)
Bombay Government Premises (Eviction) Rules, 1960 — Rule 3

Citation : (2004) 3 ALLMR 112 : (2004) 4 MhLj 187

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : J.J. Chandurkar, for the Appellant; Pradeep Kothari, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

S.T. Kharche, J.—By invoking the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, this petition is directed against the order dated 5-9-1991 passed by the learned 2nd Additional District Judge, Amravati, whereby he dismissed the appeal and confirmed the order passed by the Resident Deputy Collector (for short R.D.C.) in Eviction Proceedings bearing No. R.C. No. MRC-81/EVI/Amravati-2/90-91, directing the petitioner to vacate the government premises on the ground that the said premises were required for Government purposes as contemplated under Sub-section (c) of Section 4 of the Bombay Government Premises (Eviction) Act, 1955 (for short the Eviction Act).

2. Relevant facts are as under :

Respondent No. 1, The Executive Engineer of P.W.D., Amravati, and respondent No. 2, The State of Maharashtra, own a premises at Amravati, out of which the petitioner was inducted into the possession of one room for the purpose of running its union office. The respondent No. 3, R.D.C., is the Competent Authority for initiation of the eviction proceedings under the Eviction Act and, as such, issued a notice as per Rule 3 of the Bombay Government Premises

(Eviction) Rules, 1960 (for short the Eviction Rules) and instituted the eviction proceedings. The Competent Authority on considering the evidence and on hearing the learned counsel for the parties had passed an order directing the petitioner to vacate the premises and deliver the possession within one month from the date of service of notice under Sub-section (1) of Section 4 of the Eviction Act. Being aggrieved by this order, the petitioner had carried appeal to the District Court. Regular Civil Appeal No. 144 of 1991 came to be decided on 5-9-1991 by which the learned 2nd Additional District Judge confirmed the finding of the Competent Authority and dismissed the appeal. This order is under challenge in the present petition.

3. Mr. Chandurkar, learned counsel, for the petitioner contended that the provisions of C.P. and Berar Letting of Houses and Rent Control Order, 1949 (for short Rent Control Order) are applicable to the suit premises and, therefore, starting of eviction proceedings without obtaining the permission of the Rent Controller is bad in law. He contended that the provisions of Section 3 of the Maharashtra Act No. 46 of 1976 regarding non application of Rent Control Act to the Government premises are wrongly applied by the learned Additional District Judge for rejecting the contention of the petitioner that the eviction proceedings were not maintainable without the permission of the Rent Controller. He further contended that in absence of any exception to the applicability of the provisions of the Rent Control Order, the eviction of the petitioner without such permission of the Rent Controller is illegal and cannot be sustained in law. He contended that in such circumstances, the possession of the petitioner needs to be protected and the impugned order deserves to be quashed.

4. Mr. Kothari, learned A.G.P., for the respondents contended that the Competent Authority rightly issued the notice under Sub-section (2) of Section 4 of the Eviction Act and the R.D.C. has been declared as Competent Authority for Amravati by issuance of Government notification dated 12-8-1964. He contended that admittedly the premises is owned by the Government and it is required for housing some of the offices of the newly opened office of B and C department at Amravati and the premises is required bona fide. He contended that the Competent Authority had jurisdiction to order the eviction in accordance with the provisions of Section 4(c) of the Eviction Act. He contended that the amendment introduced in the Eviction Act by Section 3 of Maharashtra Act No. 46 of 1976 exempts the Government premises from the operation of the Rent Control Order and, therefore, the learned Additional District Judge was perfectly justified in rejecting the contention of the petitioner that the eviction proceedings are bad in law for want of permission from the Rent Controller. He, therefore, contended that there is no merit in the petition which may kindly be dismissed.

5. I have carefully considered the contentions canvassed by the learned counsel for the parties. Section 3 was introduced by way of amendment by Maharashtra Act No. 46 of 1976 in the Eviction Act which reads thus :

"3. The Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 or any

other law corresponding thereto for the time being in force, in any part of the State --

(a) shall not apply to any premises belonging to, or vesting in, any company as defined in Section 3 of the Companies Act, 1956, in which not less than fifty-one per cent of the paid-up share capital is held by the State Government, or any Corporation (not being any such company or a local authority) established by or under any Central or State Act and owned or controlled fully or partly by the State Government (hereinafter collectively referred to as "the said Corporation");

(b) shall not apply as against the said Corporation to any tenancy, licence or other like relationship created by the said Corporation in respect of any such premises;

(c) but shall apply in respect of any premises let, or given on licence, to the said Corporation."

6. A plain reading of the aforesaid amendment would show that the provisions of Rent Control Act are not applicable to the premises owned by the Government which are situated in Vidarbha region and the wording "or any other law corresponding thereto for the time being in force in any part of the State" would clearly show that the provisions of the Rent Control Order, which were in force at the relevant time in the present case in the State of Maharashtra, in the Vidarbha region, would be inapplicable so far as any premises belonging to the State Government is concerned. In such circumstances, it is obvious that the finding recorded by both the Courts below that no permission of the Rent Controller is required for institution of the eviction proceedings under the provisions of Eviction Act is perfectly legal and correct and deserves to be upheld, especially when it is not disputed that the premises which was in possession of the petitioner is owned and vests in the P.W.D. and, as such, is exempted from the provisions of the Rent Control Order by virtue of the amendment introduced in the Eviction Act by Maharashtra Act No. 46 of 1976. Therefore, this finding is not liable to be disturbed.

7. The next contention of the learned counsel for the petitioner is that the R.D.C. was not competent to institute the eviction proceedings against the petitioner. There is no merit in this contention. Section 3 of the Eviction Act contemplates that the State Government may, by notification in the Official Gazette, appoint an officer who is holding or has held an office, which in its opinion is not lower in rank than that of a Deputy Collector or an Executive Engineer, to be the competent authority for carrying out the purposes of this Act [in such area, or in respect of such premises or class of premises in any area, as may be specified in the notification, and more than one officer may be appointed as competent authority in the same area in respect of different premises or different classes of premises].

8. The Govt. of Maharashtra issued notification G.N.U.D. and F.H.D. No. EVC. 1263/52871-E, dated 12th August, 1964 published in Maharashtra Govt.

Gazette, Part IV-B, p. 1081) and declared the Resident Deputy Collector, Amravati, as Competent Authority. The notification reads as under :

"In exercise of the powers conferred by Section 3 of the Bombay Government Premises (Eviction) Act 1955 (Bom. II of 1956), and in supersession of Government Notification, Urban Development and Public Health Department, No. EVC. 1162/307-E, dated the 27th August, 1962, the Government of Maharashtra hereby appoints the following officers to be the Competent Authorities for carrying out the purposes of the said Act in respect of all Government premises (not being premises in industrial estates) in the areas within their respective jurisdiction, namely :--

1.

2.....

3. Resident Deputy Collector, Amravati."

Since the notification has been issued declaring the R.D.C. Amravati as a Competent Authority for dealing with the eviction proceedings arising out of the Eviction Act, it is obvious that the contention of the learned counsel for the petitioner is misconceived and liable to be rejected.

9. Sub-section (2) of Section 4 of the Eviction Act contemplates that 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 why an order eviction should not be made. It is not disputed that before institution of the eviction proceedings, the notice as is required under Sub-section (2) of Section 4 of the Act was served on the petitioner. Therefore, the order passed is not bad in law as there was compliance of Section 4(2) before passing the order of eviction.

10. Coming to the legality of the order of eviction, it is necessary to reproduce Section 4(c) of the Eviction Act which contemplates as under :

"4. (1) If the competent authority is satisfied

(a) ...

(b) ...

(c) that any Government premises named are required for any other Government purposes,

the competent authority may, by notice served (i) by post, or (ii) by affixing a copy of it on the outer door or some other conspicuous part of such premises, or (iii) in such other manner as may be prescribed, order that that person as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within one month of the date of the service of the notice.

11. Plain reading of this section would reveal that a person who is in occupation of the Government premises can be evicted by virtue of this provision if the Government premises is required for any other Government purposes. It is not in dispute that some of the offices of the P.W.D. were shifted at Amravati and there was need of the premises to accommodate at least some of the staff in the suit premises and, therefore, the Executive Engineer, P.W.D./respondent No. 1 sent three-four letters/notices calling upon the petitioner to vacate the premises. The Competent Authority as well as the learned Additional District Judge recorded the finding that the Government premises, which is in occupation of the petitioner, was required bona fide for occupation by the respondents. There is no reason as to why this finding of fact should be disturbed especially when no apparent error or illegality in the impugned order passed by the Additional District Judge is pointed out. The learned Additional District Judge specifically observed in these wordings "the evidence on record clearly go to show that the respondent/applicant has on and often informed the appellant Sanghatana about its requirement because it appears from the letters Ex.3 to 6 that the respondent/applicant had informed about the need of the suit premises so as to accommodate new office, It is important to note that these letters were sent to applicant Sanghatana in the year 1990. Not only this, but the respondent/applicant had offered alternative premises to the appellant. "Considering the nature of these letters, it can safely be said that the respondents require the suit premises reasonably for Govt. purpose, i.e. for its occupation." These observations of the learned Additional District Judge would show that he has considered the documentary as well as oral evidence in proper perspective and, therefore, this Court is of the considered opinion that there is no error or illegality in the impugned order. Consequently, no interference into the same is warranted. In the result, the writ petition is dismissed. No costs. Rule is discharged.